TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 280

GEORGE W. TABER, TREASURER OF PAYNE COUNTY, OKLAHOMA, PETITIONER,

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

PETITION FOR CERTIORARI FILED AUGUST 12, 1936.

CERTIORARI GRANTED OCTOBER 12, 1936.

SUPREME COURT OF THE UNITED STATES

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No.

GEORGE W. TABER, TREASURER OF PAYNE COUNTY, OKLAHOMA, PETITIONER,

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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[fol. 1]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 25,794

GEORGE W. TABOR, Treasurer of Payne County, Oklahoma, Plaintiff in Error,

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, a Corporation, Defendant in Error

PETITION IN ERROR—Filed August 13, 1934

The said George W. Tabor, Treasurer of Payne County, Oklahoma, Plaintiff in Error, complains of said Defendant in Error for that the said Indian Territory Illuminating Oil Company, a corporation, at the May Term of the District Court of Payne County, Oklahoma, recovered a judgment by the consideration of said court against the said George W. Tabor, Treasurer of Payne County, Oklahoma, in a certain action then pending in the said court, wherein the said Indian Territory Illuminating Oil Company, a corporation, was Plaintiff and the said George W. Tabor, Treasurer of Payne County, Oklahoma, was Defendant. The original case-made, duly signed, attested and filed as hereto attached marked Exhibit "A" and made a part of this petition in error; and the said George W. Tabor, Treasurer of Payne County, Oklahoma, avers that there is error in the said record and proceedings in this to-wit:

1. That the judgment of the court is not sustained by sufficient evidence, or is contrary to law.

2. Error of law occurring at the trial, and excepted [fol. 2] to by the Plaintiff in Error.

3. Error of the court in overruling the Plaintiff in Error's demurrer to the petition of the Defendant in Error.

4. Error of the court in overruling the Plaintiff in Error's demurrer to the evidence of the Defendant in Error.

5. Error of the court in overruling the motion of the Plaintiff in Error at the close of all the evidence for a judgment in its favor.

6. Error of the court in admitting incompetent, irrelevant and immaterial testimony and evidence on behalf of the Defendant in Error, said evidence being excepted to by the Plaintiff in Error.

7. Error of the court in overruling the Plaintiff in Error's motion for a new trial.

Wherefore, Plaintiff in Error prays that said judgment so rendered be reversed, set aside and held for naught and that a judgment may be rendered in favor of the Plaintiff in Error and against the Defendant in Error and that the Plaintiff in Error be restored to all rights he has lost by the rendition of such judgment, and for such other relief as to the court may seem just.

George W. Tabor, Treasurer of Payne County, Oklahoma, by Guy L. Horton, Attorney.

[File endorsement omitted.]

[fols. 3-5] [File endorsement omitted]

IN THE DISTRICT COURT OF PAYNE COUNTY, STATE OF OKLAHOMA

No. 11774

INDIAN TERRITORY ILLUMINATING OIL COMPANY, a Corporation, Plaintiff,

vs.

GEORGE W. TABOR, Treasurer of Payne County, Oklahoma, Defendant

Casemade Filed in Supreme Court of Oklahoma August 13, 1934

Trial Judge:

Hon. Freeman E. Miller, District Judge.

Appearances:

Donald Prentice, Bartlesville, Oklahoma, for Plaintiff.

Guy L. Horton, County Attorney, Stillwater, Okla., for defendant.

[fol. 6] IN THE DISTRICT COURT OF PAYNE COUNTY, STATE OF OKLAHOMA

[Title omitted]

PETITION—Filed March 2, 1934

Comes now the plaintiff and for cause of action against the defendant alleges and states:

1. That plaintiff is and was at all times hereinafter mentioned a corporation organized and existing under and by virtue of the laws of New Jersey, and is and was duly authorized and qualified to transact business in the State of Oklahoma as a foreign corporation, and has its principal place of business in Oklahoma in the city of Bartlesville, and that the defendant, George W. Taber, County Treasurer of Payne County, Oklahoma, is and was the duly elected, qualified and acting County Treasurer of Payne County, Oklahoma, and is the officer authorized by law to collect ad valorem taxes assessed upon property located in said county and state.

2. That plaintiff is and has been at all the times herein mentioned engaged, both within and without the State of Oklahoma, in the business of producing crude petroleum and natural gas, and for the purpose of carrying on its said business, and as necessarily and properly incident [fol. 7] thereto, acquired certain real estate and oil and gas leasehold estates in Payne County, Oklahoma, and had and has certain property and equipment located thereon.

3. That on January 1, 1933, plaintiff was the owner of certain personal property consisting of oil and gas well equipment located in Eagle Township, School District #103 upon the SE 7–19N–6E, Payne County, Oklahoma, an itemized list of said equipment and its value being as follows, viz:

	Rate	Value
1 Dwelling, portable	.....	$185.83
1 Garage	.....	33.18
1 Tool house	.....	14.03
7 Engines, Gas, 25 HP	166.25	1163.75
1 pump, 4 HP	.....	62.70
1 water well equipment	.....	76.00
3 Derricks, wood, pumping	72.32	216.96
2 Derricks, Steel, pumping	95.00	190.00
2 tanks, steel—105 bbl. (Per bbl.)	.075	15.75
1 tank, steel—65 bbl. (Per bbl.)	.075	4.87
8 tanks, wood—250 bbl. (Per bbl.)	.125	250.00
389′ casing, steel—15½″	.95	369.55
9406′ casing, steel—8¼	.275	2586.65
20341′ casing, steel—6 5/8	.21	4271.61
9208′ casing, steel—5 3/16″	.165	1519.32
24836′ tubing, steel—2″	.06	1490.16
24836′ rods, sucker ¾″	.02	496.72
6200′ pipe, line—6 5/8″ csg	.15	930.00
16610′ pipe, line 2″	.02	332.20
1 trailer, truck—1½ ton	.....	96.16
Miscellaneous pipe, fittings and other property	.....	1508.31
76 bbls. oil in stock tanks—37.9° gravity	.73	55.48
Total value—property used in and around producing wells on rest. Indian Lands on which exemption is claimed		$15,869.23

[fol. 8] 4. That on said date and for some years prior thereto, plaintiff was the owner of a duly approved Departmental oil and gas mining lease covering said described land, which was the allotment of Wilson Moore, deceased, a restricted Pawnee Indian, and is now owned by Belt Short Bear, Will Justice, and Colonel Moore, a minor, restricted Pawnee Indians and heirs of Wilson Moore, deceased, and plaintiff had drilled certain wells producing oil and gas upon said leasehold, and on said date has placed the above described property and equipment thereon and was actually using the same in the operation of said wells and in the development of said leasehold and to produce oil and gas therefrom.

5. That within the time and in the manner provided by law, plaintiff rendered to the County Assessor of Payne County, Oklahoma, a list or schedule of property used by it located in Eagle Township, School District #103, Payne County, Oklahoma, on January 1, 1933, which schedule contained a list of certain property of the value of $1078.03 subject to ad valorem taxation for the tax year [fol. 9] of 1933-34, and also contained an itemized list of the property and equipment above set out, it being expressly recited therein that said property was not rendered for taxation but was set out in the schedule for the sole

and only purpose of advising the County Assessor of the ownership thereof, and that the same was not subject to ad valorem taxation for said tax year for the reason that it was used in the operation of certain wells producing oil and/or gas located upon restricted Indian Land, and that plaintiff was the owner of a Departmental oil and gas mining lease covering said land and the wells located thereon, and was acting as a Federal instrumentality and agent in the operation of said wells and the development of said lease; that said schedule also expressly recited that a judgment had been rendered in the District Court of Payne County, Oklahoma, on February 24, 1933 in case No. 10794, wherein it was decreed that none of said described property and equipment was subject to ad valorem taxation in Payne County, Oklahoma for the tax year 1932-33 for the reasons as aforesaid, a true and correct copy of said schedule is hereto attached marked exhibit "A" and made a part hereof.

6. That the County Assessor of Payne County, Oklahoma, being the officer authorized by law to assess the property located in said county for taxation, accepted said list and schedule as rendered and assessed the property admitted therein to be subject to ad valorem taxation for the tax year 1933-34 as of the value of $1078.03, and duly con- [fol. 10] sidered the taxability of the above described property and equipment and determined that the same was not subject to taxation for the reasons above set out and did not assess the same for the tax year of 1933-34, and notified the plaintiff that the entire assessed valuation of the personal property owned by the plaintiff and located in Eagle Township, School District No. 103, Payne County, Oklahoma, for said tax year was the sum of $1078.03.

7. Plaintiff further alleges that the assessed valuation of the property owned by plaintiff and located in said township and school district which was extended on the tax rolls was after the assessment aforesaid, surreptitiously, illegally and improperly increased to the sum of $16,947.26 for said tax year in that the above described property and equipment was assessed and placed upon the tax rolls of Payne County, Oklahoma, as of the valuation of $15,869.23; that said property and equipment was assessed and placed upon the tax rolls, and that the assessed valuation of the property owned by plaintiff and located in said township

and school district was thus increased without authority at law and without any notice whatsoever to plaintiff, and without its knowledge or consent, and that said illegal assessment and increase was not made by the Board of Equalization acting for Payne County, Oklahoma, for said tax year, or by any other agency or individual authorized by law.

8. Plaintiff alleges that it did not know that said described property and equipment had been assessed for taxa- [fol. 11] tion for said tax year, or that the valuation of the property owned by it and located in said township and school district had been so increased and had no means of ascertaining or discovering said assessment or increase until time for payment of taxes, and that it did not discover said assessment and increase until the month of January, 1934, when the taxes assessed for said tax year were due and payable, and in order to pay the taxes levied upon its property plaintiff secured a tax statement from the defendant herein, which disclosed that said described property and equipment had been assessed and placed upon the tax rolls and the value of the property owned by plaintiff in said township and school district had thus been increased; that at the time of discovery the Payne County Board of Equalization had long since adjourned and by reason of said illegal assessment and increase in valuation, plaintiff was denied the right to appear before the Board of Equalization of Payne County, Oklahoma, or any other board or person from which an appeal is provided by law, and because plaintiff had not given notice of said illegal and unlawful assessment and increase plaintiff has been deprived of due process of law.

9. Plaintiff further alleges that at the time and in the manner provided by law, and before delinquency and on February 2, 1934, for the purpose of protecting itself from the assessment of penalties provided by the statutes of this state, and so that the illegal and unlawful tax assessment and levy made in pursuance thereto as aforesaid would not constitute a lien upon the real estate owned by plaintiff [fol. 12] in said county as aforesaid, and so said illegal and unlawful taxes would not constitute a cloud upon the title to all property owned by said plaintiff in said county, and under duress and compulsion by reason thereof, plaintiff paid to said defendant the sum of $676.72, being the amount

of taxes illegally and unlawfully levied as aforesaid, under protest, and at the same time notified the defendant to use no part of said sum so paid but to hold the same separate and apart from any other funds and taxes collected, received or held by said defendant pending such litigation as might be instituted. A true and correct copy of said protest and notice is hereto attached marked exhibit "B" and made a part hereof.

10. Plaintiff alleges that on January 1, 1933, the above described property and equipment was located upon the restricted Pawnee Indian Oil and gas mining leasehold estate above described and was being actually used in and around producing wells upon said described leasehold and in the operation of said leasehold and in the production of oil and gas therefrom, and that all of said property and equipment is and was a necessary adjunct to the production of oil and/or gas, without the use of which plaintiff could not produce oil and/or gas from said leasehold; that plaintiff in the exploration and development of said lease, in the production of oil and gas therefrom, in the placing of said described property and equipment thereon and in the use of the same for such purposes was and is at all times herein [fol. 13] mentioned operating as a Governmental agency and instrumentality, and said property and equipment is not subject to ad valorem taxation in Payne County, Oklahoma, as taxation thereof would constitute a tax upon and interference with the operation of a Governmental agency in the performance of its governmental functions, and the assessment of said property and equipment for said tax year as aforesaid is illegal and unlawful.

11. Plaintiff alleges that on February 24, 1933 in case No. 10,794 the District Court of Payne County, Oklahoma rendered judgment wherein it was adjudged and decreed that said described property and equipment was not subject to ad valorem taxation in Payne County, Oklahoma, as of January 1, 1932 for the tax year of 1932-33, and plaintiff alleges that there has been no change in the use of said property and equipment since said judgment or since January 1, 1932, and further states that said property and equipment was used for the same identical purposes on January 1, 1933, as on January 1, 1932, and that said judgment is res judicata, and that the attempted assessment thereof for the tax year of 1933-34 is illegal and unlawful.

A true and correct copy of said judgment is hereto attached marked exhibit "C" and made a part hereof. Plaintiff further states that the taxes paid as aforesaid in the sum of $676.72 have been illegally and unlawfully exacted from this plaintiff and plaintiff is entitled to recover the same from defendant.

[fol. 14] Wherefore, premises considered, plaintiff prays judgment against defendant in the sum of $676.72 with interest and costs of this action.

W. P. McGinns, Archibald Bonds, Donald Prentice, Bartlesville, Oklahoma, Attorneys for Plaintiff.

[fol. 15] EXHIBIT A TO PETITION

Inventory of Property

Owned by Indian Territory Illuminating Oil Company, P. O. Address: Drawer L, Bartlesville, Oklahoma, and rendered -or assessment of taxes for year 1933, by E. B. Emenhiser, Secretary to the County Assessor of Payne County, Oklahoma.

Summary of Personal Property

By Townships and School Districts as Shown on Attached Sheets

School District	Eagle Township	Value
No. 103	$1,078.03	$ 1,078.03
Total value extended for assessment		$ 1,078.03
Property used in and around producing wells on restricted Indian lands		15,869.23
Property used in and around producing wells on Commercial leases		7,680.57
Total Value—Property used in and around producing wells on which exemption is claimed		23,549.80

See Appendix "A"—Restricted Indians Lands.
See Appendix "B"—Commercial leases.

(Stamp.) Approved, Originating Dept. VH. Legal Dept. Execut'n. D P.

I hereby acknowledge receipt of the original hereof, filed with me this 1 day of May, 1933.

J. H. Blankenship, Assessor for Payne County, Okla.

STATE OF OKLAHOMA,
County of Washington, ss:

I, E. B. Emenhiser, being first duly sworn, upon oath depose and say, that I am the Secretary of Indian Terri- [fol. 16] tory Illuminating Oil Company; that the principal business of said corporation in Oklahoma is transacted in the county of Washington, Oklahoma, where said corporation is located; that the foregoing return constitutes a full, complete and true statement of all property—real, personal or credits, owned, used, possessed or controlled by said corporation on the first day of January, 1933, and subject to assessment for ad valorem taxes in Payne County, Oklahoma, and that no property—real, personal or credits, which is subject to assessment for ad valorem taxes in said county has been omitted, and that the values as stated represent the fair, taxable values of said property; that the report as required by Section 9962 (C. O. S. 1921) will be filed with the County Assessor of Washington County, Oklahoma as provided by law.

E. B. Emenhiser, Secretary.

Subscribed and sworn to before me this 28 day of April, 1933. Emmet Ely, Notary Public. My commission expires July 11, 1935. (Seal.)

[fol. 17] County Payne

Equipment in and Around Exhausted Oil Wells

Located in Eagle Township, School District No. 103

SE/4 Section 7–19–6

Wilson-Moore Farm, Well No. 8

1 Pumping Unit w/ 10 HP Engine	$ 326.75
1 Tank, Wood, 250 bbl	31.25
3087′ Casing—5 3/16″	189.59
2931′ Casing—6 5/8″	234.73
3150′ Tubing 2″	283.50
3150′ Sucker rods 3/4″	12.21
Total value—Eagle Township, S.D. No. 103	1078.03

Total value extended for assessment—Eagle Township, 1,078.03.

Total value—Equipment in and around exhausted oil wells, $1,078.03.

[fol. 18] County Payne

Steel Storage Tanks Located in Eagle Township, School District No. 91

Steel Storage Tanks Located on E/2 NE/4 Section 35–19N–SE on Spencer Tank Farm—Our Fee. #31

1025	0–5	55,000 bbls.	Empty
1026	"	"	"
1027	"	"	"
1028	"	"	"
1029	"	"	"
1030	"	"	"
1031	"	"	"
1040	"	"	"
1041	"	"	"
1042	"	"	"
1043	"	"	"

11—55,000 bbl. tanks or 605,000 bbls, .05

"Reported in real property return."

Total value—Eagle Township, S. D. No. 91, $0.

Located in Eagle Township, School District No. 102

Steel Storage Tanks Located on East 56.5 Acres of E/2 SE/4 Section 35–19N–6E on Spencer Tank Farm—Our fee #31

1024	0–5	55,000 bbls.	Empty
1032	"	"	"
1033	"	"	"
1034	"	"	"
1035	"	"	"
[fol. 19] 1036	"	"	"
1037	"	"	"
1038	"	"	"
1039	"	"	"

9—55,000 bbl Tanks or 495,000 bbls .05

"Reported in Real property return"

Total value—Eagle Township, S. D. No. 102, $0.

Total value—Eagle Township, $ 0.

County Payne

Steel Storage Tanks—Continued.

Located in Union Township, School District No. C–6

Steel Storage Tanks Located on W/2 SE/4 Section 15–17N–5E, on Vockrodt Tank Farm: Our Fee $156

507	0–5	55,000 bbl.	Empty
516	"	"	"
517	"	"	"
518	"	"	"
519	"	"	"
528	"	"	"
529	"	"	"
530	"	"	"
531	"	"	"

9 55,000 bbl. tanks or 495,000 bbls .05

"Reported in Real Property Return"

Total value—Union Township, S. D. No. C-6	$ 0
Total value—Union Township	$ 0
Total value—Steel Storage tanks	$ 0
(Reported in real property return.)	

[fol. 20] Indian Territory Illuminating Oil Company, Payne County, Oklahoma

List and Value of Property Used in and Around Producing Wells on Restricted Indian Lands

Appendix "A"

This list or schedule of personal property is made for the sole and only reason of apprising the Assessor of Payne County, Oklahoma, of the ownership of said property, and the Indian Territory Illuminating Oil Company protests and objects to the placing of any said property on the tax rolls of Payne County, Oklahoma, for the tax year 1933-34, and asserts that none of said property is subject to ad valorem taxation for the reason that the same is used in the operation of certain wells producing oil and/or gas, located on restricted Indian lands. That the Indian Territory Illuminating Oil Company is the owner of departmental oil and gas leases covering said lands and the wells, located thereon, and is acting as a federal instrumentality and agent in the operation of said wells and the development of said leases.

Your attention is specifically directed to the judgment rendered by the Hon. Freeman E. Miller, Judge of the District Court of Payne County, Oklahoma, on the 24th day of February, 1933, in case No. 10794, wherein it was held that none of said equipment and property was subject to ad valorem taxation for the tax year 1931-32 for the reasons above set forth.

[fol. 21]

Located in Eagle Township, School Distfict No. 103

Personal Property situated on SE/4 Section 7-19N-6E, on Wilson-Moore farm, used in connection with the operation of well Nos. 1-2-3-4-5-6-7 and 9, for the production of Oil and natural gas.

	Rate	Value
1 Dwelling, portable	.....	$185.83
1 Garage	.....	33.18
1 Tool house	.....	14.03
7 Engines, Gas, 25 HP	166.25	1163.75
1 pump, 4 HP	.....	62.70
1 water well equipment	.....	76.00
3 Derricks, wood, pumping	72.32	216.96
2 Derricks, Steel, pumping	95.00	190.00
2 tanks, steel—105 bbl. (Per bbl.)	.075	15.75
1 tank, steel—65 bbl. (Per bbl.)	.075	4.87
8 tanks, wood—250 bbl. (Per bbl.)	.125	250.00
389' casing, steel—15½"	.95	369.55
9406' casing, steel—8¼"	.275	2586.65
20341' casing, steel—6 5/8"	.21	4271.61

	Rate	Value
9208′ casing, steel—5 3/16″	.165	1519.32
24836′ tubing, steel—2″	.06	1490.16
24836′ rods, sucker ¾″	.02	496.72
6200′ pipe, line—6 5/8″ csg.	.15	930.00
16610′ pipe, line 2″	.02	332.20
1 trailer, truck—1½ ton	.....	96.16
Miscellaneous pipe, fittings and other property	.....	1508.31
76 bbls. oil in stock tanks—37.9° gravity	.....	55.48
Total value—property used in and around producing wells on rest. Ind. Lands on which exemption is claimed		$15,869.23

[fol. 22] Indian Territory Illuminating Oil Company, Payne County, Oklahoma

List and Value of Property Used in and Around Producing Wells on Commercial Leases

Appendix "B"

Property used in and around producing wells, in connection with the production of oil and/or gas upon which Gross Production Taxes are paid, and necessary to economical production thereof, including the following:

Wells of various construction—including casing, casing shoes, float collars, clamps, supporting and holddown devices, various control heads, Christmas tree hookups, control and regulating devices, tubing, tubing supports, tubing catchers, flow devices, tubing head connections, sucker rods, well pumps stuffing boxes, polish rods, polish rod clamps, beam hangers, rigs, relegs, run arounds, fourble platforms, crown blocks, lines, various rig irons, bull wheels, band wheels, calf wheels, sand reels, counter balances, equipment incidental to installation and use thereof; cleanout units, countershaft clutches, belt and engine houses, engines, clutches, outboard bearings, engine pipe and connections, auxiliary pumps, air compressors, air tanks, regulators, gasometers, volume tanks, circulating tanks, electric wiring, belts and idlers.

Pipe and connections from well head to separator, separators and connections, towers and/or platforms for same, vent lines and fittings, oil lines and fittings, from separators to batteries of working tanks and/or treating plants.

[fol. 23] Tank batteries of various construction—consisting of all or some of the following: working tanks, stairways, walkways, ground and riser pipe and connections,

drain connections and pipe, sales connections, fire protection systems and devices, pumps with connecting steam, oil and waste pipe and fittings.

Treating plants of various construction—consisting chiefly of tanks or containers, pumps, chemical, heat or wash treating devices, with connecting pipe and fittings of oil, steam and water waste from boiler houses.

Boiler batteries of various construction—consisting of all or part of the following: boilers, burners, boiler foundations, boiler houses, fuel, water and steam pipe with fittings, control devices, water heating devices, pumps, generators and electric wiring.

Lease water wells of various construction—consisting of various parts of the following: casing, casing shoes, clamps, heads, tubing, tubing supports, tubing heads, flow devices, pumps, well rods, stuffing boxes, and connections; jacks, pumping heads, engines, motors and compressors, lease water supply tanks and connections, fire fighting systems of various kinds and constructions, houses, hose, hydrants with supply pipe, fire engines and apparatus, hand or motor powered chemical and mechanical.

Tool houses, material houses, dockes, sheds, dog houses and oil houses.

[fol. 24] All the above mentioned tools, supplies and equipment are not necessarily in and around any one well, but a portion is in and around each, as the supplies, tools, and equipment differ on each individual type of well.

Lease name	Description	Number of Wells
School land.....	SE/4 Section 35–20–4	1

Property used in and around producing wells on commercial leases on which exemption is claimed, $7,680.57.

[fol. 25] EXHIBIT B TO PETITION

January 23, 1934.

Mr. George W. Taber, County Treasurer of Payne County, Stillwater, Oklahoma.

Re Payment of Taxes of Indian Territory Illuminating Oil Company, 1933-34 Under Protest

DEAR SIR:

The Indian Territory Illuminating Oil Company was on January 1, 1933, the owner of and in possession of certain

personal property in Payne County, Oklahoma, described as follows:

"Located in Eagle Township, School District No. 103

Personal Property situated on SE/4 Section 7-19N-6E, on Wilson-Moore farm, used in connection with the operation of well Nos. 1-2-3-4-5-6-7 and 9, for the production of Oil and natural gas.

	Rate	Value
1 Dwelling, portable	.....	$185.83
1 Garage	.....	33.18
1 Tool house	.....	14.03
7 Engines, Gas, 25 HP	166.25	1163.75
1 pump, 4 HP	.....	62.70
1 water well equipment	.....	76.00
3 Derricks, wood, pumping	72.32	216.96
2 Derricks, Steel, pumping	95.00	190.00
2 tanks, steel—105 bbl. (Per bbl.)	.075	15.75
1 tank, steel—65 bbl. (Per bbl.)	.075	4.87
8 tanks, wood—250 bbl. (Per bbl.)	.125	250.00
389' casing, steel—15½"	.95	369.55
[fol. 26]		
9406' casing, steel—8¼"	.275	2586.65
20341' casing, steel—6 5/8"	.21	4271.61
9208' casing, steel—5 3/16"	.165	1519.32
24836' tubing, steel—2"	.06	1490.16
24836' rods, sucker ¾"	.02	496.72
6200' pipe, line—6 5/8" csg	.15	930.00
16610' pipe, line 2"	.02	332.20
1 trailer, truck—1½ ton	.....	96.16
Miscellaneous pipe, fittings and other property	.....	1508.31
76 bbls. oil in stock tanks—37.9° gravity	.73	55.48
Total value—property used in and around producing wells on rest. Ind. Lands on which exemption is claimed		$15,869.23

That the same was listed and filed with the tax assessor of said county and exemption from ad valorem taxation was claimed because said property was used in and around producing oil wells upon restricted Indian lands and was being used as a Federal instrumentality, and for the further reason it had been found and adjudged by the District Court of Payne County, Oklahoma to be exempt from ad valorem taxation because said property was used as a Federal instrumentality.

That when the Indian Territory Illuminating Oil Company filed its list of property with the assessor, same was not placed on the tax rolls; that the representatives of this company appeared before the County Equalization Board [fol. 27] and discussed the taxability of said property and the same was not placed on the tax rolls by the County Equalization Board, neither was said property placed on

the tax rolls by order of the State Board of Equalization; that the first information this company had that said property was on the tax rolls was on or about January 5, 1934, when it received a statement from the county treasurer of said county to that effect, and that the same was subject to ad valorem taxes in the sum of $676.72.

We, therefore, hand you herewith the sum of $676.72, same being paid under protest, and you are notified and requested to hold said fund separate and apart from any other funds and taxes collected, received or held by you pending such litigation as may be instituted.

That from such actions as were taken to subject this company's property to ad valorem taxation, no appeal is provided, and you are further notified that said company will, within the next thirty days, institute suit for the recovery of said taxes, for the reason that said property is not taxable on an ad valorem basis on account of its use as a Federal instrumentality and because it has been adjudged to be exempt from ad valorem taxation on account of such use.

Very truly yours, Indian Territory Illuminating Oil Company, by. (Signed) E. B. Emenhiser.

Reg. Mail.

I hereby acknowledge receipt of the original hereof filed with me this 2 day of Feb. 1934.

(Signed) Geo. W. Taber, Treasurer of Payne County, Oklahoma.

[fol. 28] EXHIBIT C TO PETITION

IN THE DISTRICT COURT OF PAYNE COUNTY, OKLAHOMA

No. 10794

In the Matter of the Assessment of Personal Property of the Indian Territory Illuminating Oil Company, a Corporation, for the Year 1931

Journal Entry

This cause coming on to be heard this 24th day of February, 1933, pursuant to regular assignment for trial be-

fore Freeman E. Miller, Judge of the District Court of Payne County, Oklahoma, and the Indian Territory Illuminating Oil Company, a corporation, appearing by Donald Prentice, its attorney, and Guy Horton, County Attorney of Payne County, Oklahoma, appearing, and all parties announcing ready for trial and the court after hearing the argument of counsel and being fully advised in the premises, and upon examination and review of the transcript of appeal from the decision of the Payne County Board of Equalization, filed in this cause, and upon consideration thereof finds:

That on January 1, 1931, the Indian Territory Illuminating Oil Company, a corporation, was the owner of 72,207 barrels of crude oil of 37° gravity, from one to five years old, which was located in School District No. 91, Eagle Township, Payne County, Oklahoma, on said date and was stored in tanks upon the east half of the northeast quarter of section 35, township 19 north, range 6 east, Payne County, Oklahoma, and was of the value of $42,602.13; and was also the owner of a duly approved de-
[fol. 29] partmental oil and gas mining lease covering the southeast quarter of section 7, township 19 north, range 6 east, Payne County, Oklahoma, being the allotment of Wilson Moore, deceased, a restricted Pawnee Indian, said land now being owned by Belt Short Bear, Will Justice and Colonel Moore a minor, restricted Pawnee Indians and heirs of the said Wilson Moore, deceased; that the Indian Territory Illuminating Oil Company, a corporation drilled certain wells producing oil and gas upon said land, and on January 1, 1931, had placed certain property, equipment and improvements upon said land, which was used in the operation of said wells and in the exploration and development of said land and to produce and preserve the oil and gas therefrom in order to comply with the terms of said oil and gas mining lease, an itemized list of said property and its location being as follows:

Quantity	Article of property	Rate	Value	Amount Extended for Assessment
1	Dwelling, portable	.....	$256.95	
1	Garage	.....	45.87	
1	House, tool	.....	20.48	
9	Engines, gas 25 HP	175.00	1575.00	
1	Pump, 4 HP	.....	80.00	
	Water well equipment 1 well	.....	101.70	
8	Derricks, pumping wood	100.00	800.00	
1	Derrick, pumping wood	.....	100.00	
2	tanks, steel 105 bbl	.15	31.50	
[fol. 30]				
1	Tank, steel, 65 bbl	.15	9.75	
9	Tanks, wood 250 bbl	.25	562.50	
389′	Casing, 15½″—steel	1.00	389.00	
9406′	Casing, 8¼″—steel	.29	2727.74	
23272′	Casing, 6 5/8″ steel	.225	5236.20	
12295′	Casing 5 3/16″ steel	.175	2151.62	
27986′	Tubing 2″—steel	.06	1679.16	
27986′	Rods, sucker—¾″	.02	559.72	
6200′	Pipe, line (6 5/8 csg.)	.225	1395.00	
16610′	Pipe, line, 2″	.05	830.50	
	Miscl. Pipe fittings, supplies and all other property	.....	1984.87	
	Total value School District No. 103, Eagle Township			$20,537.56

The court further finds that the Indian Territory Illuminating Oil Company, a corporation, filed a tax return for the taxable year of 1931 with the County Assessor of Payne County, Oklahoma, as provided by law, and that the same contained a list of all property owned by said corporation in said county on January 1, 1931 and included the above described crude oil and the property, equipment and improvements located upon said restricted Pawnee Indian oil and gas leasehold; that in said tax return the said crude oil was claimed to be exempt from taxation for the reason that it had been produced from a restricted Seminole Indian allotment located in Seminole County, Oklahoma, and that in the production of said oil the Indian [fol. 31] Territory Illuminating Oil Company, a corporation, was acting as a governmental instrumentality; that the above itemized property, equipment and improvements were also claimed to be exempt from taxation for the reason that the same was used in the development and operation of the aforesaid departmental oil and gas leasehold estate covering the above described restricted Pawnee Indian land in order to produce oil and gas therefrom, and

that the Indian Territory Illuminating Oil Company, a corporation, was using the same in the operation of said leasehold as a governmental agency and instrumentality.

The court further finds that the County Assessor placed all of said property on the tax rolls of Payne County, Oklahoma and assessed the same for taxation, and that thereafter the Indian Territory Illuminating Oil Company, a corporation, filed objections to such assessment with the Board of Equalization of Payne County, Oklahoma; that said objections were duly heard by said Board as provided by law and the same were denied and overruled; that the Indian Territory Illuminating Oil Company, a corporation, paid the taxes levied upon said property under protest and has duly perfected an appeal to this court as provided by law, and that this court has jurisdiction of this cause.

The court further finds that the above described 72,207 barrels of crude oil are subject to taxation as of January 1, 1931, and that the objections of the Indian Territory Illuminating Oil Company, a corporation, should be denied [fol. 32] and overruled and the acts of the County Assessor and Board of Equalization of Payne County, Oklahoma, in placing said crude oil on the tax rolls of said county and assessing the same for ad valorem taxes for the taxable year of 1931 should be affirmed, and that the taxes upon said oil in the amount of $769.04 heretofore paid under protest by the Indian Territory Illuminating Oil Company, a corporation, have been legally collected by the County Treasurer of Payne County, Oklahoma.

The court also finds that on January 1, 1931, the above itemized property, equipment and improvements were located upon said restricted Pawnee Indian oil and gas leasehold and were being actually used in and around producing wells upon said described restricted land and in the operation of said oil and gas mining lease and in the production of oil and gas therefrom, and that all of said property is a necessary adjunct to the production of oil and gas without which the Indian Territory Illuminating Oil Company, a corporation, could not produce oil and gas under the terms of said departmental oil and gas lease.

The court further finds that the Indian Territory Illuminating Oil Company, a corporation, in the exploration and development of said lease and in the production of oil and gas therefrom, and in the placing of said described prop-

erty, equipment and improvements thereon and in the use of the same for such purposes was and is operating as a governmental agency and instrumentality, and that the taxation of the same would constitute a tax upon and inter- [fol. 33] ference with the operations of a governmental agency in the performance of its governmental function.

The court further finds that the objections of the Indian Territory Illuminating Oil Company, a corporation, to the taxation of said property should be sustained and the action of the County Assessor and Board of Equalization of Payne County, Oklahoma, in placing said property on the tax rolls of said county and assessing the same for taxation as of January 1, 1931, was without authority of law and the same should be stricken from the tax rolls and the order and decision of the Board of Equalization of Payne County, Oklahoma, should be vacated and annulled and the taxes levied upon such property and heretofore paid under protest by the Indian Territory Illuminating Oil Company, a corporation, in the amount of $771.40 have been illegally collected and the County Treasurer of Payne County, Oklahoma, should be ordered and directed to immediately refund said amount, together with interest thereon as provided by law to the Indian Territory Illuminating Oil Company, a corporation.

It is, therefore, ordered, adjudged and decreed, by the court that the above described 72,207 barrels of crude oil owned by the Indian Territory Illuminating Oil Company, a corporation, as aforesaid are subject to ad valorem taxation in Payne County, Oklahoma for the year 1931, and the objections of the Indian Territory Illuminating Oil Company, a corporation to the taxation of said oil should be and are hereby denied and overruled, and the action of the [fol. 34] County Assessor and the Board of Equalization of Payne County, Oklahoma, in placing said crude oil on the tax rolls of said county and assessing the same for taxation as of January 1, 1931, should be and is hereby affirmed and the taxes levied upon said oil in the amount of $769.04 heretofore paid by the Indian Territory Illuminating Oil Company, a corporation, under protest have been legally collected by the County Treasurer of Payne County, Oklahoma.

It is further ordered, adjudged and decreed, by the court that the Indian Territory Illuminating Oil Company, a

corporation, in the exploration, development and operation of the above described departmental oil and gas mining lease covering said described restricted Pawnee Indian land and in the placing of the above itemized property, equipment and improvements thereon and in the use of the same, is and has been acting as a governmental agency and instrumentality, and that said property is a necessary adjunct to the operation of said lease and to the production of oil and gas therefrom, and that the taxation of same would constitute a tax upon and interference with the operations of a governmental agency in the performance of its governmental functions, and that the same is not subject to taxation in Payne County, Oklahoma for the year 1931.

It is further ordered, adjudged and decreed, by the court that the action of the County Assessor and Board of Equalization of Payne County, Oklahoma, in placing said de-[fol. 35] scribed property, equipment and improvements upon the tax rolls of said county and assessing the same for taxation for the year 1931, was without authority of law and the same should be stricken from said tax rolls and the order of the Board of Equalization of said county ordering said property to be placed on the rolls should be and is hereby reversed, vacated and annulled.

It is further ordered, adjudged and decreed by the court that the taxes in the amount of $771.40 levied upon said property, equipment and improvements for the year 1931 and heretofore paid under protest by the Indian Territory Illuminating Oil Company, a corporation, were illegally collected and the County Treasurer of Payne County, Oklahoma, is hereby ordered and directed to immediately refund said amount, together with interest thereon as provided by law, to the Indian Territory Illuminating Oil Company, a corporation.

Freeman E. Miller, Judge.

O.K. Guy L. Horton, County Attorney, Donald Prentice, Attorney for Indian Territory Illuminating Oil Company, a corporation.

[File endorsement omitted.]

[fols. 36 & 37] Summons and return omitted in printing.

[fol. 38] IN THE DISTRICT COURT OF PAYNE COUNTY

[Title omitted]

DEMURRER—Filed March 9, 1934

Comes now the defendant above named and demurs to the petition of the plaintiff above named filed herein, for the reason that said petition does not state facts sufficient to constitute a cause of action in favor of said plaintiff and against this defendant.

That said petition shows on its face that the plaintiff is not entitled to the relief prayed for in said petition.

Guy L. Horton, County Attorney, Payne County, Okla.

[fol. 39] [File endorsement omitted.]

IN DISTRICT COURT OF PAYNE COUNTY

ORDER OVERRULING DEMURRER—April 3, 1934

[Title omitted]

The demurrer to petition in above cause is by the court overruled and exceptions allowed and ten days given in which to answer.

[fol. 40] IN THE DISTRICT COURT OF PAYNE COUNTY

[Title omitted]

ANSWER—Filed April 9, 1934

Comes now the defendant above named and for his answer to the petition of the plaintiff above named filed herein, denies each and every material allegation therein contained.

Guy L. Horton, County Attorney, Payne County, Okla., Attorney for the Defendant.

[File endorsement omitted.]

[fol. 41] IN DISTRICT COURT OF PAYNE COUNTY

Transcript of Evidence

And thereafter and on the 26th day of April 1934 this case comes on for trial pursuant to the assignment thereof, the plaintiff being present by Donald Prentice, its attorney and the defendant is present by Guy L. Horton, County Attorney of Payne County, Oklahoma, and both sides announce ready for trial, and the following record is made before the Court without the intervention of a jury, to-wit:

By Mr. Prentice: If the Court please, these taxes are for the year 1933 and it is the position of the plaintiff that they are the owner of this departmental restricted lease and that they are using this equipment in the production of oil and gas, and that it is necessary in the production of the oil and gas, and are using the equipment in the operation as a government instrumentality, and the taxation of this equipment by Payne County would be a tax upon a governmental instrumentality. This same point was urged to your Honor on the prior year, we take the position—

By the Court: The same old question John Marshall raised away back there.

By Mr. Prentice: Yes, sir. We also take the position that your former decree in that case, is res adjudicata of this year's tax for the reason there has been no change in the use of the property and that your Honor has already determined that the plaintiff is a governmental instrumentality, and their use of this property, using the same as such, that it is not subject to ad valorem taxation.

[fol. 42] By the Court: It would be a poor court that is always bound by its former opinion, wouldn't it?

By Mr. Horton: The defendant takes the position in this case that the property in this case is the property of the Indian Territory Illuminating Oil Company and that no part of it is owned by the Indian who is the owner of the land, and that a taxation of this property would not be the taxation of the governmental agency.

By the Court: What kind of property is it?

By Mr. Horton: It is property used, consisting of derricks and tubing and casing and tanks, sucker rods and a portable dwelling and garage.

V. L. HUNT, is thereupon called as a witness on behalf of the plaintiff, and having been duly sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows, to-wit:

Direct examination.

By Mr. Prentice:

Q. State your name?
A. V. L. Hunt.
Q. Where do you live?
A. Bartlesville.
Q. What is your business?
A. I have charge of the tax department of the I. T. I. O.
[fol. 43] Q. What are your duties as tax man for the I. T. I. O.?
A. To compile all renditions taken from the proper authorities and make all tax payments.
Q. Are you familiar with the Wilson-Moore lease owned by the I. T. I. O., the SE¼ of 7-19N-6, Payne County, Oklahoma?
A. Yes, sir.
Q. Are there any oil and gas wells located thereon?
A. Yes, sir.
Q. Do you know how many?
A. I think there are eight.
Q. Is there equipment being used upon that lease?
A. Yes, sir.
Q. Did you make a rendition of that equipment to the County Assessor of this county for the year 1933?
A. Yes, sir.
Q. I hand you plaintiff's exhibit "A" and ask you to state what that is?
A. That is a personal property rendition made to the County Assessor of Payne County for the taxing year 1933-34.
Q. Is that the original rendition?
A. Yes, sir.
Q. Where did you get that rendition this morning?
A. From the County Assessor's office.
Q. When was that filed with the County Assessor?
A. I believe on May 1st, 1933.

[fols. 44-53] By Mr. Prentice: We now offer plaintiff's exhibit "A" in evidence.

By Mr. Horton: Objected to as incompetent, irrelevant and immaterial.

By the Court: Overruled. Let it be admitted.

By Mr. Horton: Exception.

(Thereupon, plaintiff's exhibit "A" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

Omitted. Printed side page 15, ante.

[fol. 54] Q. Do part of your duties consist of paying the taxes, also?

A. Yes, sir.

Q. Did you make payment of the taxes levied upon the property owned by the plaintiff in Payne County for the year 1933?

A. Yes, sir.

Q. How were those taxes paid?

A. By check of the I. T. I. O.

Q. To whom was the check delivered

A. To the County Treasurer of Payne County.

Q. How?

A. By registered mail.

Q. Were they paid under protest?

[fols. 55-58] A. Yes, sir.

Q. I hand you plaintiff's exhibit "B" and ask you to state what that is?

A. This is the payment under protest on the property on the Wilson-Moore lease.

Q. Don't you mean that is the notice of protest?

A. Yes, sir, notice of payment under protest.

Q. To whom was that sent?

A. George W. Taber.

Q. Anything there to indicate it was received by Mr. Taber?

A. It has his signature.

By Mr. Prentice: We offer plaintiff's exhibit "B" in evidence.

By Mr. Horton: Objected to as incompetent, irrelevant and immaterial.

By the Court: Overruled. Let it be admitted.
By Mr. Horton: Exception.

(Thereupon, plaintiff's exhibit "B" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

Omitted. Printed side page 25, ante.

[fol. 59] Q. After the mailing of this protest to Mr. Tabor, did you receive any acknowledgement from Mr. Taber?
A. Yes, sir.
Q. Did you forward a check to Mr. Taber accompanying your protest?
A. Yes, sir.
Q. Was that check cashed?
A. Yes, sir.
Q. And after that time did you receive an acknowledgement of payment from Mr. Taber?
A. A tax receipt.
Q. I hand you plaintiff's exhibit "C" and ask you to state what that is?
A. The tax receipt from the County treasurer's office indicating that this amount of money, originally protested was paid to and received by the county treasurer.
Q. Does that say whether or not it was paid under protest?
A. Yes, sir, it indicates that it was paid under protest.

By Mr. Prentice: We offer plaintiff's exhibit "C" in evidence.

By Mr. Horton: Objected to as incompetent, and irrelevant and immaterial.

By the Court: Overruled, let it be admitted.
By Mr. Horton: Exception.

(Thereupon, plaintiff's exhibit "C" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

[fol. 60] PLAINTIFF'S EX. "C"

County Treasurer's Office, Payne County, Stillwater, Oklahoma

No. 2998

Febr. 10, 1934.

Received of Indian Territory Illuminating Oil Co. the sum of $676.72 of Eagle Township for the all payment of the following taxes for the year 1933.

Personal tax. School Dist. 103. State Equalized value. 15869 County, Twp. or Municipal tax, 143.72.
School District Tax, 533.00 Total, 676.72.

Paid Under Protest.

Original Tax Receipt 1933.
(Stamp:) Feb. 12. Recd.
George W. Taber, County Treasurer, by Katherine Shelton, Deputy.

Q. Do you know whether or not the Indian Territory Illuminating Oil Company was producing oil from the Wilson-Moore lease January 1, 1933?

A. I do.

Q. To whom was that oil delivered by the plaintiff, what refining company or oil company?

A. The Yale Oil Company, Yale.

Q. Are you familiar with the records of the plaintiff as to whom the royalty is being paid?

A. To the agency at——

[fol. 61] By Mr. Horton: Objected to as not the best evidence.

By the Court: Yes, sustained. I guess so.

Q. Do you have any statements of the company that is purchasing the oil produced from this lease?

A. Yes, sir.

Q. Will you produce them?

A. Yes, sir.

Q. Do you know to whom the royalty is being paid on the production from this lease.

A. Yes, sir.

Q. Do you know by whom it is being paid?

A. Yes, sir.

Q. By whom is that royalty being paid and to whom?

A. It is being paid by the purchasing company, which is the Yale Oil Corporation.

Q. And to whom is the royalty being paid?

A. Sent directly to the Pawnee Indian Agency at Pawnee, by the purchaser.

Q. I hand you plaintiff's exhibit "D" and ask you to state what that is?

A. It is a statement of the runs as made by the Indian Territory Illuminating Oil Company, to the Yale Oil Corporation, the amount of oil purchased and the amount of remittance.

Q. That also shows to whom the remittance was made. [fol. 62] A. Yes, sir.

By Mr. Prentice: We offer plaintiff's exhibit "D" in evidence.

By Mr. Horton: No objections.

By the Court: It may be admitted.

(Thereupon, plaintiff's exhibit "D" having been offered and admitted in evidence, the same is set out here in words, *letters and figures* as follows, to-wit:)

PLAINTIFF'S EXHIBIT D

Please examine immediately as it will be impossible to correct errors after 30 days.

Yale, Okla. 1-31-34.

Yale Oil Corporation

State of Account of Indian Terr. Ill. Oil Co., Bartlesville, Oklahoma

Oil Runs Wilson-Moore-7-19-6 farm. Month of Jany-1934

Barrels of oil

Date Tank No. Credit Debit.

Oil Rec'd from your lease—Month of Jany-1934.

Date	Ticket	Bls.	Gv.	Price	Amount
1- 1-34	3	81.68	37.7		
1- 5-34	8	71.56	37.5		
1-11-34	19	81.44	37.5		
11-16-34	24	73.64	37.7		
1-22-34	32	79.10	37.8		
1-25-34	38	76.24	37.7		
		463.66		1.02	$472.93

Ded. Acct. overpayment ticket #457 11-13-33

Your letter 12-30-33..... 1.64

$471.29

[fol. 63]

PLAINTIFF'S EXHIBIT D—Continued

1/8th royalty	57.95	58.91
7/8ths W. I.	405.71	412.38
Lese excise tax HB	#483–1/8th of 1 c per bbl.	.51
	463.66	411.87
Ch to Indian Terr. Ill. Oil Co. Bartlesville Ok		411.87
Ck to Pawnee Indian Agency—Pawnee—Okla		58.91

No gross production tax due-acct Restricted Indian Land.
CRR/C
5c.
HH.

Q. You have examined the records of the plaintiff for the month of December 1932 and January 1933 to find the royalty being paid from this lease.

A. Yes, sir.

Q. And was the royalty being paid in the same manner as shown by this statement, at that time?

A. Yes, sir.

Cross examination.

By Mr. Horton:

Q. You say that at the time the assessment was made this year this lease was being operated, oil produced from it?

A. Yes, sir.

Q. How long has it been since you have been on the lease?

A. I have never been on the lease to my knowledge.

Q. Then your knowledge about that fact is merely what someone has told you, or what you have learned from other sources.

[fol. 64] A. Yes, sir, it is based on our records in the office.

Q. Then you are not familiar with the equipment upon the lease.

A. Not directly.

By the Court:

Q. What you know is what your records show is out there.

A. Yes, sir.

Q. You don't know whether it is our there or not.

A. No, sir.

By Mr. Horton: I move the court to strike this witness's testimony concerning the fact that this lease is being oper-

ated and oil being produced upon it at the time the property herein was assessed and became subject to assessment.

By Mr. Prentice: I object to the motion being sustained for the reason that the record shows what the evidence is. It may be secondary in a way, but the tax returns are prepared from the records.

By the Court: Well, of course, this witness's admissions on cross examination show that he doesn't know the ultimate facts in the case, but just simply from the records—whatever it is worth—but I will not strike it. Overruled.

By Mr. Horton: Exception.

(Witness is excused.)

[fol. 65] By Mr. Prentice: Comes now the plaintiff and offers in evidence, plaintiff's exhibits "E", "F" and "G", being the photostatic copies of the original departmental oil and gas mining lease executed Belt Short Bear and others, and "F" being the assignment of said lease covered by exhibit "E" by the Westerly Oil Company to the Indian Territory Illuminating Oil Company, and "G" being the stipulation modifying the terms of the oil and gas mining lease executed by the parties and approved by the Secretary of the Interior.

By Mr. Horton: No objections.

By the Court: They may be admitted.

(Thereupon, plaintiff's exhibit "E" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

[fol. 66] PLAINTIFF'S EX. "E"

Quadruplicate. Form 5–154h. Lease No. 76

(Stamp:) Office of Indian Affairs. Received Oct. 13, 1914. 11031.

(Stamp:) Office of Indian Affairs. Received June 13, 1919. 51353.

Oil and Gas Mining Lease—Allotted Indian Lands

Pawnee Reservation, Oklahoma

This indenture of lease, made and entered into in quadruplicate on this 3rd day of February, A. D. 1913, by and

between Belt Short Bear, Will Justice and Geo. W. Nellis, Supt. for Colonel Moore a minor aged 11 years, heirs of Wilson Moore, deceased of Pawnee, State of Oklahoma, allottee No. 263 of the Pawnee tribe of Indians, party of the first part, hereinafter designated as lessor, and Westerly Oil Company of Bartlesville, State of Oklahoma, party of the second part hereinafter called the lessee, under and in pursuance of the provisions of the act of Congress approved March 3, 1909 (35 Stat. L. 781-783), and the regulations approved by the Secretary of the Interior, September 3, 1912;

Witnesseth:

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations and conditions hereinafter contained, and hereby agreed to be paid, observed, and performed by the lessee, do hereby demise, grant, lease and let unto the lessee for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil and gas shall be found in paying quantities, all the oil deposits and natural gas in and under [fol. 67] the following described tract of land, lying and being within the county of Payne, State of Oklahoma, to-wit: The SE/4 of section 7, township 19 N, range 6 E of the Indian Meridian, and containing 160 acres, more or less, with the exclusive right to prospect for, extract, pipe, store and remove oil and natural gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing and removing such oil and natural gas, also the right to obtain from wells or other sources on said land, by means of pipe lines or otherwise, a sufficient supply of water to carry on said operation, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The leasee hereby agrees to pay or cause to be paid to the Superintendent of Indian School or other officer of the United States having jurisdiction over the leased premises, hereinafter called the officer in charge, for the use and benefit of the lessor, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or

removal of the oil. And the lessee shall pay as royalty on each gas-producing well three hundred dollars per annum in advance, to be calculated from the date of commencement of utilization; provided, that in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject [fol. 68] to the approval of the Secretary of the Interior, agree upon a royalty which will become effective as a part of this lease; provided, further, that in case of gas wells of small volume or where the wells produce both oil and gas or oil and gas and salt water to such an extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well which cannot profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desire to retain gas producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from date of discovery of gas, on each gas producing well the gas from which is not marketed and not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for [fol. 69] which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to the officer in charge, for the use and benefit of the lessor, as advanced royalty, from the date of the approval of this lease, fifteen cents per acre per annum, in advance, for the first and second years; thirty cents per acre per annum, in advance, for the third and fourth years; seventy five cents per acre

in advance, for the fifty year, and one dollar per acre per annum, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties for the year for which the payment of advanced royalty is made, and the lessee hereby agree that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on the land covered by this lease, and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to the officer in charge, for the use and benefit of the lessor, for each whole year the completion of such well is delayed, after the date of such approval by the Secretary of the Interior, but not to exceed [fol. 70] ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year, and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in anywse *to* operate to release or relieve the lessee from the covenant and obligation to pay

such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose, to drill ~~and~~ operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells, lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties [fol. 71] which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled, or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirements shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in its occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to the lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; the lessee shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells, which shall remain the property of the lessee and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; shall not permit any nuisance to be maintained on [fol. 72] the premises under lessee control, nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil bearing stratum, or in the manner required by the laws of the State in which the lands are situated.

6. The lessee shall keep an accurate account of all oil mining operations, showing the sales, prices, dates purchasers, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all improvements, tools, movable machinery and all other personal chattels used in operating said property, and upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty.

The lessee shall submit quarterly reports, whether oil royalty is paid by the pipe line company or other purchaser, to the officer in charge within fifteen days after March 31, June 30, September 30 and December 31 of each year upon prescribed forms, showing manner of operation, total production during the quarter, and all receipts during the quarter from any operations under the lease for the benefit of the lessor or the lessee, or both, giving the amount of each payment, the name of the party making same, and the nature of the operations from which the money covered by such payment was d-rived.

7. The lessee may at any time, by paying to the officer in charge all amounts then due as provided herein, and [fol. 73] the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder; provided, that if this lease has been recorded, lessee shall execute a release and record the same in the proper county recording office; provided further, that in the event the trust period expires or the lessor be granted a patent in fee, the lessee may surrender all the undeveloped portion of the leased premises, by paying the officer in charge all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations prescribed by the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease; provided, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assign-

ment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease, the Secretary of the Interior (or the lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right at any time after thirty days' notice to the lessee specifying the terms and conditions violated, to declare this lease null and [fol. 74] void and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian Office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or bonds as may be required by said Secretary, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the leasehold premises described above, by the trust period expiring and the lessor being given a patent in fee to the lands, or by the lessor being granted a patent in fee prior to the termination of his trust patent, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the officer in charge shall thereafter be made to lessor of the then [fol. 75] owner of said lands in person, or be deposited to the credit of said lessor or his assigns at such place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

Will Justice. (Seal.) Belt Short Bear. (Seal.)
Geo. W. Nellis, Supt. for Colonel Moore.

Two witnesses to execution by lessor: Victor E. Norton, P. O. Pawnee, Okla. Carrie E. Ross, P. O. Pawnee, Okla.

Westerly Oil Company, by H. V. Foster, President. (Seal.)

Attest: M. P. Stilwell, Secretary.

Two witnesses to execution by lessee: Chas. Foheich, Bartlesville, Okla. C. W. Anderson, Bartlesville, Okla.

STATE OF OKLAHOMA,
Washington, ss:

Before me, Thos. F. Gorman, a notary public in and for the said county and state, on this 8th day of April, 1913, personally appeared H. V. Foster to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President and [fol. 76] acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

Thos. F. Gorman, Notary Public. My commission expires January 26th, 1916. (Seal.)

STATE OF OKLAHOMA,
County of Pawnee, ss:

Electa S. Nellis, before me, notary public in and for said county and state, on this 3rd day of February, 1913 personally appeared Will Justice, Belt Short Bear and Geo. W. Nellis for Colonel Moore, a minor, heirs of Wilson Moore, deceased to me known to be the identical person who executed the within and foregoing lease, and acknowledged to

me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Electa S. Nellis, Notary Public. My commission expires March 1, 1916. (Seal.)

Department of the Interior,

United States Indian Service

Pawnee Training School or Agency, Pawnee, State of Oklahoma, 1913

The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be approved. (See my report of even date.)

Geo. W. Nellis, Superintendent of the Pawnee School or Agency.

[fol. 77] Department of the Interior

Office of Indian Affairs

The within lease is respectfully submitted to the Secretary of the Interior with recommendation that it be approved on condition that its term shall not extend beyond the minority of Colonel Moore, the minor heir.

E. B. Merett, Assistant Commissioner of Indian Affairs.

Department of the Interior, Oct. 23, 1914.

Approved as recommended: B. O. Sweeney, Assistant Secretary.

The conditional approval of the within lease, to expire on December 31, 1922, the date on which Colonel Moore will reach his majority, is hereby accepted.

Westerly Oil Company, by H. V. Foster, Pres.
United States Fidelity & Guaranty Co., by W. E. Phillips, Attorney in Fact. (Seal.)

On the back: State of Oklahoma, County of Payne, ss. This instrument was filed for record on the 10 day of Apr. A. D. 1917 at 1:35 P. M. and duly recorded in book 9 of L. R. page 172. W. T. Keys, County Clerk, by M. L. Edwards, deputy. (Seal.)

(And plaintiff's exhibit "F" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

[fol. 78] PLAINTIFF'S EX. "F"

Payne #4341.

(Stamp:) Department of Interior. Received Oct. 20, 1930. 55124

I-69-ind-158. 5-154c

(Must be executed in quadruplicate.)

Assignment of Oil and Gas Lease

Whereas the Secretary of the Interior has heretofore approved oil and gas mining lease, dated February 3, 1913, entered into by and between Westerly Oil Company, lessee and Belt Short Bear, Will Justice, and Geo. W. Nellis, Supt. for Colonel Moore, a minor, aged 11 years, heirs of Wilson Moore, deceased, Allottee #263, lessor, covering the following described land in the Pawnee Reservation, State of Oklahoma southeast quarter (SE¼) of section 7, township 19 north, range 6 east.

Now, therefore, for and in consideration of one and no/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Westerly Oil Company, the lessee in the above described lease, hereby bargains, sells, transfers, assigns, and conveys all the right, title and interest of the lessee in and to said lease, subject to the approval of the Secretary of the Interior to Indian Territory Illuminating Oil Company.

In Witness whereof the said lessee has hereunto set its hand and seal this 1st day of October, 1930.

Westerly Oil Company, by L. W. Gordon, its Vice President. (Seal.)

Attest: W. W. Varvel, Asst. Secretary.

(Stamp:) Approved. Originating dept. MED. Legal dept. Subs'nce. Execut'n AB.

[fol. 79] STATE OF OKLAHOMA,
County of Washington, ss:

On this 1st day of October, A. D. 1930, before me, a notary public within and for the State and county afore-

said, personally appeared R. L. Gordon and W. W. Varvel, to me personaly known, who, being by me duly sworn. did each say that R. L. Gordon is the vice-president and W. W. Varvel is the assistant secretary of Westerly Oil Company, a corporation, and that the seal affixed to the foregoing and annexed instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and said R. L. Gordon and W. W. Varvel duly acknowledged that they each had in their said official capacities executed the foregoing instrument as the act and deed of the said company for the consideration and purposes therein mentioned and set forth; and I do hereby so certify.

Witness my hand and seal on this 1st day of October, 1930.

M. B. Douglass, Notary Public. My commission expires Nov. 28, 1931. (Seal.)

Acceptance by Assignee

The assignee in the above and foregoing instrument made subject to the approval of the Secretary of the Interior hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said-described indenture of lease, when assigned, and the rules [fol. 80] and regulations of the Secretary of the Interior, so far as applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof the said assignee has hereunto set its land and seal this 1st day of October, 1930.

Indian Territory Illuminating Oil Company, by R. L. Gordon, its Vice President. (Seal.)

Attest: W. W. Varvel, its Asst. Secretary.

Department of the Interior, Washington, D. C. Nov. 3, 1930.

Approved: Jas M. Dixon, First Assistant Secretary of the Interior.

Endorsed on the Back: Westerly Oil Co. to Indian Territory Illuminating Oil Company. State of Oklahoma,

County of Payne, ss. This instrument was filed for record on the 25 day of Nov. A. D. 1930 at 2:10 o'clock P. M. and duly recorded in 22 A. R. page 576. V. A. Doty, County Clerk, by Velma Ricker, Deputy. (Seal.)

(Thereupon, plaintiff's exhibit "G" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

[fol. 81] PLAINTIFF'S EXHIBIT G

5-154i.

Stipulation Modifying Terms of Oil and Gas Mining Lease

(To be executed in quadruplicate.)

Belt Short Bear, Will Justice and Supt. Thomas Ferris, for Colonel Moore, a minor, heirs of Wilson Moore, deceased Pawnee Allottee No. —.

Whereas, 263, of Pawnee, Oklahoma, as lessor and Westerly Oil Company of Bartlesville, Oklahoma, as lessee, entered into an oil and gas mining lease dated February 3, 1913, covering the following described land allotted to Wilson Moore, deceased and situate in Payne County, State of Oklahoma to-wit: SE/4 of Sec. 7 Twp. 19 North, range 6 East, containing 160 acres. That the terms of said lease are hereby modified with reference to the expiration thereof, as follows: "That the within lease is made subject to the condition that it will extend to the majority of the minor lessor, Colonel Moore, who will reach his majority on Dec. 11, 1922, and as much longer thereafter as oil or gas may be found in paying quantities on said premises.

Whereas, the present owner of said lease and the owner of said described land desire to amend, change, and modify certain terms of said contract;

Now, therefore, in consideration of the sum of one ($1,00) dollar, the receipt whereof is hereby acknowledged by the lessors, and other and further valuable considerations, said lease is hereby modified so as to in all respects [fol. 82] conform to the terms and conditions of the lease

form authorized and adopted in pursuance of the revised regulations approved by the Secretary of the Interior on September 3, 1912, a copy of which lease form, marked exhibit "A", is attached hereto and made a part hereof, and all terms and conditions of said original lease contract in conflict therewith are hereby abrogated and held for naught; provided, however, that nothing herein contained shall be construed to change the date of said above-described lease or the date from which rents and royalties thereunder shall be computed and be payable.

In witness whereof, the parties hereto have affixed their signatures this 5th day of May, 1919.

Belt Short Bear. Will Justice. Thomas Ferris, Supt. Thomas Ferris, for Colonel Moore, Minor lessor.

Two witnesses to execution by lessor: A. T. Seevers, P. O. Pawnee, Oklahoma. J. B. Davis, P. O. Pawnee, Oklahoma.

Westerly Oil Company, H. O. Foster, President.

Attest: C. H. Caldwell, Secretary.

Two witnesses to execution by lessee: Thos F. Gorman, P. O. Bartlesville, Okla., H. C. McChisney, P. O. Bartlesville, Okla.

Acknowledgement of Lessor

STATE OF OKLAHOMA,
County of Pawnee, ss:

Before me, a notary public, in and for said County and State on this 5th day of May, 1919, personally appeared Belt Short Bear, Will Justice and Supt. Thomas Ferris for Colonel Moore, minor, heirs of Wilson Moore, deceased, to [fol. 83] me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Ruth Sayre, Notary Public. My commission expires October 1, 1922.

Acknowledgment of Corporation (Lessee)

STATE OF OKLAHOMA,
County of Washington, ss:

Before me, a notary public, in and for said County and State, on this 13th day of May, 1919, personally appeared H. V. Foster, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

T. C. Williams. My commission expires 12-30-1920.

Consent of Surety

The United States Fidelity & Guaranty Company of Baltimore, Maryland, surety for The Westerly Oil Company on the bond covering the lease above described, hereby consents to the above modifications of the terms of the said lease and agre-s that said bond shall secure any and all additional obligations assumed by the lease owner herein. [fol. 84] Dated at Bartlesville, Okla. 13th day of May, 1919.

United States Fidelity and Guaranty Company,
W. Holm, Attorney in Fact.

Department of the Interior, Washington, D. C. Jul. 26, 1919.

Approved: S. C. Hopkins, Assistant Secretary.

JOE HERRING, is thereupon called as a witness on behalf of the plaintiff and having been duly sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows, to-wit:

Direct examination.

By Mr. Prentice:

Q. State your name?
A. Joe Herring.
Q. Where do you live?

A. Yale.

Q. What is your business?

A. In charge of the property of the I. T. I. O. company in the Yale district.

Q. Are you in charge of the so-called Wilson Moore lease?

A. Yes, sir.

[fol. 85] Q. That covers the southeast quarter of 7-19-6, Payne County, Oklahoma.

A. Yes, sir.

Q. Do you live on the lease?

A. Yes, sir.

Q. You are out there every day.

A. Yes, sir.

Q. How long have you lived on that lease?

A. Three or four years.

Q. Were you in charge of the lease and living there on January 1st, 1931?

A. Yes, sir.

Q. And also on January 1st, 1933?

A. Yes, sir.

Q. Are you familiar with the equipment and improvements placed on that lease by the plaintiff?

A. Yes, sir.

Q. Are you familiar with the use of them?

A. Yes, sir.

Q. I hand you plaintiff's exhibit "A" being the tax rendition of the plaintiff for the year 1933, and ask you to examine appendix A, with reference to the property itemized, and can you tell the court whether or not that property is located upon the Wilson Moore lease, and was January 1, 1933?

A. Yes, sir, it was.

Q. Was all that property used in the production of oil and/or gas from the lease upon that date?

[fol. 86] A. Yes, sir.

Q. Was the same property located on that lease on January 1st 1931?

A. Yes, sir.

Q. Was it used for the same purpose on January 1, 1931 as it was on January 1st, 1933?

A. Yes, sir.

Q. Since January 1st, 1931, is it true or not, that well No. 6 was abandoned before January 1, 1933?

A. No, sir. No. 6 had a fishing job and the well shut down, but not abandoned.

Q. Is all of this property necessary for the use of the company to produce oil and gas from this lease?

A. Yes, sir.

Cross-examination.

By Mr. Horton:

Q. Is well No. 6 being operated now?

A. Yes, sir.

Q. Was it on January 1st, 1933?

A. No, sir.

Q. Has it been operated during 1933?

A. No, sir.

By Mr. Prentice:

Q. I meant to refer to Well No. 8?

A. Yes, sir.

Q. That was abandoned prior to January 1, 1933.

A. Yes, sir.

[fol. 87] By Mr. Horton:

Q. How often do you go on the lease?

A. Every day.

Q. And it is a fact that oil has been produced on this lease and this equipment used at all times during the year 1933.

A. Yes, sir.

Q. And on January 1, 1933.

A. Yes, sir.

Q. You stated that all of this is necessary for the production of oil upon the lease.

A. Yes, sir.

Q. Have you examined this list lately to see what property is on there?

A. I think I have.

Q. On the first item, portable dwelling, is there such a dwelling on the lease?

A. Yes, sir.

Q. In what way is that necessary for the production of oil and gas from these premises?

A. The pumper has to have a place to live.

Q. And you do that?

A. Yes, sir.

Q. Well, you live in Yale.

A. No, sir, I live out there, too.

Q. Do you live on the lease?

A. Yes, sir.

Q. In a house on the lease?

A. Yes, sir.

[fol. 88] Q. Is that claimed to be exempt, also, the house you live in?

A. I don't know whether it is or not.

By the Court:

Q. How far is this lease from Yale?

A. One mile.

Q. East?

A. North.

By Mr. Horton:

Q. Then your contention is that the reason the dwelling house is necessary is because the pumper has to have a place to live.

A. Yes, sir.

Q. Do you work in 12 hour shifts?

A. No, sir, he is pumper, he starts his work up and pumps them all. And I got the responsibility all the time.

Q. Do his duties require him to be on the least 24 hours a day?

A. Not necessarily 24 hours, but it is that way sometimes.

Q. You have one garage listed here which you say is also necessary in the production of oil. In what respect would that be necessary.

A. This man has to have a car and he has to have a garage to put it in.

Q. And this garage is located on the lease.

A. Yes, sir.

Q. And you feel that that is necessary for the same reason you feel the house is necessary.

A. Yes, sir.

By the Court:

Q. Is the car owned by the company?
A. No, sir.

[fol. 89] By Mr. Horton:

Q. He don't need a car on the premises so far as going about the lease attending to his duties.
A. Yes, sir.
Q. How large is the lease?
A. A quarter section.
Q. You think it is necessary for him to drive between these wells?
A. Occasionally it is.
Q. Why is that?
A. Well, he may want to take something up to a well, say a hundred feet of 2 inch pipe, he couldn't carry it.
Q. Is this a car or truck.
A. It is a car.

By the Court:

Q. The car is his car.
A. Yes, sir.

By Mr. Horton:

Q. The tool house is the next item listed. Explain the necessity for the tool house.
A. Well, you have got to have some place for tools.
Q. That is where the tools are kept?
A. Yes, sir.
Q. The next item, engines——

By the Court:

Q. Do you use the tool house for keeping tools on any other lease than this Indian lease?
A. No, not necessarily, only if there happens to be tools in this house we would need on another lease, we would use them.
Q. It isn't a jointly operated took house, if anything is used it is incidental.

[fol. 90] By Mr. Horton:

Q. The next item you have is 7 gas engines, what use are those engines put to?

A. Yes, sir.

Q. And those stock tanks are located upon the leasehold.

A. Yes, sir.

[fol. 93] Q. And the Indian's share hadn't been run out of this 76 barrels.

A. No, sir.

Q. They would wait until they had a tank full and then it would be run to the purchasing company.

A. Yes, sir.

Q. Was all of this equipment used for the same purpose on January 1, 1931.

A. Yes, sir.

"That's all."

(Witness is excused.)

By Mr. Prentice: Comes now the plaintiff and offers in evidence exhibits "H" and "I", being the complete pleadings and judgment rendered in case No. 10,794 in the District Court of Payne County, Oklahoma, in the matter of the assessment of personal property of the Indian Territory Illuminating Oil Company, for the year 1931, the judgment therein being rendered on February 24, 1933.

By Mr. Horton: To which the defendant objects as incompetent, irrelevant and immaterial, and having no connection with this case.

By the Court: This is a new taxing period and conditions might have materially changed from what they were then. Objection sustained.

By Mr. Prentice: Exception.

[fol. 94] Thereupon, plaintiff's exhibit "H" having been offered in evidence by the plaintiff, and rejected by the court, the same is set out here in words, letters and figures as follows, to-wit:)

PLAINTIFF'S EXHIBIT "H"

IN THE DISTRICT COURT OF PAYNE COUNTY, STATE OF OKLAHOMA

No. 10,794

In the Matter of the Assessment of Personal Property of the Indian Territory Illuminating Oil Company, a Corporation, for the Year 1931

Filed, State of Okla., County of Payne, Nov. 19, 1931, Dewey Dobson, Court Clerk, by D. R., deputy.

BEFORE THE COUNTY BOARD OF EQUALIZATION OF PAYNE COUNTY, OKLAHOMA

In the Matter of the Assessment of Personal Property of the Indian Territory Illuminating Oil Company, a Corporation, for the Year 1931.

Case Made for Appeal

Before the Excise Board of Payne County

Present:

C. A. Melton, Chairman. J. M. Grubbs, Member. W. W. Myatt, Member.

Appearances:

Ernest F. Jenkins, County Attorney, Stillwater, Oklahoma.

C. E. Wilhite, Attorney for Indian Territory Illuminating Oil Company.

[fol. 95] Be it remembered, that on the 18th day of November, 1931, comes the Indian Territory Illuminating Oil Company, and files its complaint, which complaint is set out here in words, letters and figures as follows, to-wit:

BEFORE THE COUNTY BOARD OF EQUALIZATION OF PAYNE COUNTY, OKLAHOMA

In the Matter of the Assessment of Personal Property of the Indian Territory Illuminating Oil Company, a Corporation, for the Year 1931.

Complaint

To the Honorable County Board of Equalization of Payne County, Oklahoma:

Comes now the Indian Territory Illuminating Oil Company, a corporation, and for complaint against the action of the county asesssor of said county, states:

That heretofore, the complainant rendered all of its personal property in said county for taxation and in a separate rendition rendered certain property in said county belonging to the complainant which it claimed is not taxable, which list of non-taxable property is hereby referred to and made a part hereof as if embodied in this complaint. That among the items of personal property claimed exempt are:

72,207 bbls. of oil produced from lands of Restricted Indians of the Five Civilized Tribes, stored in tanks on the E½ of the NE¼ of section 35, Township 19 north, range 6 east, gravity thirty-seven degrees from one to five years old at 59@ or $42,602.13, other items as shown in said list of non-taxable property amount to $20,537.56.

[fol. 96] That prior to June 22, 1931, the complainant herein was notified by the assessor of said county that said property had been assessed for taxation and that in pursuance to said notice the complainant herein prepared a complaint to file before the County Board of Equalization of said county to the effect that the complainant was aggrieved at the assessment so made and asking the County Board of Equalization to correct the assessment and to strike from the rolls the assessment so made by the county assessor, and said complainant by its duly authorized representative, appeared before the County Board of Equalization of said county on June 22, 1931, and upon the undetstanding and statements then made, the complainant did not file said complaint because the said County Board of Equalization eliminated from the tax roll the item of $20,537.56 a copy of said

order is attached hereto, marked exhibit "A" and made a part of this complaint.

The complaint further states that thereafter the county assessor made an abstract of the assessment of said county and submitted the same to the State Board of Equalization for its action, and that prior to the 6th day of November, 1931 the State Board of Equalization had certified and returned said abstract and equalization to the proper officer of Payne County, Oklahoma. That on said date, Messrs. C. A. Melton, J. M. Grubbs, and W. W. Myatt held a purported meeting as the Board of Equalization of Payne County, and then and there, as the complainant believes and is informed, without authority of law rescinded the [fol. 97] action of the Board of Equalization lawfully made striking said property from the tax roll on June 22, 1931, and that in obedience to said purported order, the assessor of Payne County has placed said property represented by valuation of $20,537.56 on the tax roll of Payne County, Oklahoma.

And now on this date, the said County Board of Equalization of Payne County claiming to still be in session, the complainant herein files this complaint against the action of the assessor and thereupon states:

1. That the purported County Board of Equalization now in session and in session on November 6, 1931, had no right or authority of law to rescind the order striking said property from the tax rolls made on June 22, 1931.

2. That the County Assessor of Payne County had no lawful right or authority to place said property represented by the items complained of as not being taxable on the tax roll after he had completed the assessment roll and forwarded an abstract thereof to the State Board of Equalization.

3. That the County Board of Equalization had no right to assemble and could make no valid order on November 6, 1931. Their only power to act would be in the capacity of an excise board.

4. That the property rendered to the assessor under protest, which the complainant claimed and now claims exempt, was not and is not subject to ad valorem taxes as of Janu-

ary 1, 1931, for the reason that said property is now, was then, and has at all times heretofore been oil well drilling [fol. 98] apparatus, supplies and equipment necessarily used in and around wells producing oil and gas from land belonging to a Restricted Indian and that said property was indispensable for said use. That said property is located on the southeast quarter (SE¼) of section 7, township 19 north, range 6 east, known as Wilson Moore farm, and that the Indian owner of said land is not subject to taxation and that the property owned and held by him as a ward of the Government is not subject to taxation and that the Indian Territory Illuminating Oil Company has developed the land of said restricted Indian by permission and under supervision of the United States Government by and through the Secretary of the Interior and is now operating same in such capacity and as such, developed and is operating said lease as a governmental agency or instrumentality.

5. Complainant further states that the stored oil above referred to and shown in the list of exempt property and claimed exempt by this complainant, is oil produced from Restricted Indian land of the Five Civilized tribes, and that the complainant herein produced same from Restricted Land in the capacity of an instrumentality of the United States Government, and for the reasons herein assigned said property is not taxable, and should by the county board of equalization of Payne County, be stricken from the rolls.

Wherefore, complainant prays that the Equalization Board of Payne County reverse the order and action of the County Assessor of said county in placing said property on the tax roll and that all of said property be stricken from [fol. 99] the tax rolls of Payne County, and that the complainant be granted such other relief in the premises as the Board deems just.

Indian Territory Illuminating Oil Company, by C. E. Wilhite, its Attorney.

Indorsed on Back: Before the County Board of Equalization of Payne County, Oklahoma. In the matter of the assessment of personal property of the I. T. I. O. a corp. for the year 1931. Complaint, Filed Nov. 18, 1931. C. E. Wilhite, Attorney, Drawer L. Bartlesville, Okla.

And thereafter, and on the same day and date, to-wit, the 18th day of November, 1931, this cause comes on for hearing before the Board of Equalization of Payne County. The State of Oklahoma is present by Ernest F. Jenkins, County Attorney, and the complainant is present by C. E. Wilhite, its attorney, and the following record is made, to-wit:

BEFORE THE EQUALIZATION BOARD OF PAYNE COUNTY, OKLAHOMA

In the Matter of the Protest of the Indian Territory Illuminating Oil Company for Assessment of Personal Property in Payne County for the Year 1931-32.

By Mr. Wilhite: Comes now Indian Territory Illuminating Oil Company, a corporation, hereinafter called "complainant", by its attorney of record, C. E. Wilhite, and Payne County, Oklahoma, a political corporation, by its county attorney, Ernest F. Jenkins, and both sides reserving the right to except to the rulings and decisions of the [fol. 100] Board of Equalization, and the right to appeal therefrom, stipulate and agree that the following statement contains and shall constitute the facts in the above entitled matter, and that said Board may enter judgment thereon accordingly, the same as if such facts hereinafter recited had appeared from the evidence and testimony adduced in open hearing before said Board of witnesses duly summoned to appear and testify, it being further stipulated that the appearance of such witnesses and the introduction of such testimony orally, is hereby waived:

1. That the Equalization Board of Payne County, Oklahoma is in session on this 18th day of November, 1931, and that such board is duly authorized and empowered to hear this proceeding.

2. That complainant is a corporation duly organized and incorporated under the laws of the State of New Jersey and that it has a permit to do and transact business in the State of Oklahoma; that it maintains its principal office in Bartlesville, Washington County, Oklahoma, and that it is engaged in the production and discovery of oil.

JOE HERRING is thereupon called as a witness on behalf of the Complainant, and, after being first duly sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows, to-wit:

Direct examination.

By Mr. Wilhite:

Q. State your name?
A. Joe Herring.
[fol. 101] Q. You live at Yale?
A. Yes, sir.
Q. You are now employed with the Indian Territory Illuminating Oil Company?
A. Yes, sir.
Q. What is your connection with the company?
A. District Superintendent.
Q. As such District Superintendent, what are your duties?
A. To see that things are running, to have charge of the operation in the district.
Q. Are you acquainted with the Wilson-Moore lease?
A. I am.
Q. Do you know where it is located?
A. Yes, sir.
Q. How many wells are on that lease?
A. Nine.
Q. I hand you an instrument which purports to be the original return, or assessment list filed by the Indian Territory Illuminating Oil Company, with the County Assessor. Calling your attention to page 2 of that return and property shown to be located in School District 103, Eagle Township, and being on the Wilson-Moore farm, I will ask you Mr Herring, if that property listed is all on that farm?
A. Just about, there is three derricks that isn't there.
Q. How many is there?
A. Five, there are nine listed.
Q. There was nine, wasn't there, Mr. Herring?
[fol. 102] A. No, we lost them.
Q. When did you lose those three?
A. In September, 1930.
Q. That was when that cyclone struck?

A. Yes, sir.

Q. As a matter of fact there was only six derricks standing on that farm the first of January this year?

A. Yes, sir.

Q. That property, commencing with where it says: 9 engines, gas, 25 h. p. from there on down, all of that property is used immediately around the lease, is it not?

A. Yes, sir.

Q. Now those two steel tanks, 105 barrels, what are they used for?

A. To store oil in until we ship it to the pipe line.

Q. Is that what you call stock tanks?

A. Yes, sir.

Q. That 65 barrel steel tank, what is that?

A. Separating tank we pump into.

Q. Where you separate oil from water?

A. Yes, sir.

Q. The nine wooden tanks, what are they used for?

A. To circulate water.

Q. Where you circulate water through the various engines you have running?

A. Yes, sir.

Q. Casing, ranging from 15½ inch in size down to 5 3/16 inch, is that used in the various wells?

[fol. 103] A. Yes, I couldn't swear that all of that pipe was there, because sometimes they pull the pipe.

Q. Has there been any casing pulled in those wells?

A. Not since I have been there.

Q. How long have you been there?

A. Since the 16th of June, 1930.

Q. The 27,986 feet of sucker rods are used there in pumping the wells.

A. Yes, sir.

Q. The line of pipe shown here is the pipe used to connect the wells to the various tanks.

A. Yes, sir.

Q. The other miscellaneous fittings and supplies, are various valves and gauges and things used in connection with the wells?

A. Yes, sir.

Q. One dwelling house, that is a sectional house.

A. Yes, sir.

Q. State how the company buys their field houses, in

what condition, do they buy the lumber and build them, or are they ready built?

A. This was ready built, it come in sections, then we put it together.

Q. That house is not on wheels.

A. No, sir.

Q. It is on a foundation?

A. Yes, sir.

[fol. 104] Q. And an employe of the company lives in it.

A. Yes, sir, the pumper.

Q. The garage, what is it used for?

A. For this pumper's car.

Q. Is there a company truck also stored there?

A. Yes, sir.

Q. The car is used for the convenience of the pumper in covering his territory.

A. Yes, sir.

Q. The truck is used for hauling material and supplies back and forth on the lease.

A. Yes, sir.

Q. The tool house, what is it used for?

A. To keep tools and things in.

Q. As a matter of fact, on the first of January, it was empty, wasn't it?

A. Yes, sir.

That is all.

Cross-examination.

By Mr. Jenkins:

Q. How far up from Yale is this lease?

A. Perhaps a mile, or mile and a half.

Q. It isn't altogether necessary that they have this dwelling house out there on the lease for these people to live in if it is just a mile from Yale.

A. It is.

Q. Isn't there vacant houses in Yale?

A. Yes, sur, but we require a man to live on the place, so [fol. 105] he can look after it.

Q. This garage, what is it used for?

A. For the pumper's car, and truck.

Q. Is that garage necessary in the production of oil?

A. Yes, sir, it is.

Q. Couldn't that pumper pump oil as well if his car was setting out?

A. No, sir.

Q. He couldn't do it?

A. No, sir.

Q. The oil wouldn't come out.

A. No, sir, this man needs his car. In bad weather, he couldn't start it to get around, if he left it setting out.

Q. This tool house here, what is that used for.

A. For various tools we have.

Q. Is that tool house used in the actual production of the oil?

A. It is.

Q. And these engines, what do you use them for?

A. To furnish power.

Q. Is there an engine used with each derrick?

A. Yes, sir.

Q. And this pump, 4 h. p. what is it used for?

A. To pump oil out of stock tanks when we sell oil.

Q. You use the one pump for all of it?

A. Yes, sir.

Q. This water well equipment, what is that for?

A. To furnish fresh water to circulate through the engines.

[fol. 106] Q. What is this, 1—65 bbl. steel tank for?

A. To pump in to separate the water from the oil.

Q. This 389 foot of casing, what is that casing used for?

A. To shut off surface water.

Q. Is that used in the production of the oil?

A. Yes, sir.

Q. And what is this 8½ inch steel casing for?

A. For the same purpose, shutting off water.

Q. And the 6⅝ casing, what is it for?

A. The same purpose.

Q. And this 5 3/16 is that for the same purpose?

A. Yes, sir.

Q. These sucker rods, what are they?

A. To lift this oil to the surface.

Q. Then the pipe line, what is that for?

A. To carry the oil to these stock tanks.

Q. How big are those stock tanks?

A. About a hundred barrel, or a hundred and five.

Q. Does any of this 6,200 feet of pipe line go off of this particular lease?

A. No, sir.

Q. Then you have 16,610 feet of 2 inch pipe line, what is that for?

A. To carry oil, gas and water.

That is all.

Redirect examination.

By Mr. Wilhite:

Q. This house the pumper lives in is furnished by the Company.

[fol. 107] A. Yes, sir.

Q. Will you state what the company's ruling is, relative to the storage of cars, will they allow them kept out in all kinds of weather?

A. No, sir.

Q. It is a ruling of the company's that they be stored under cover when not in use.

A. Yes, sir.

Q. I believe you stated it was a requirement of the company that the pumper live on the lease he operates?

A. Yes, sir.

Q. All of this casing that is listed there is necessary in the operation of wells, to prevent water circulation and caving.

A. Yes, sir.

Q. The way the wells are operated, you drill down, and put in casing, and drill further and put in smaller casing, and so on to the bottom of the hole?

A. Yes, sir.

That is all.

The witness is excused.

By Mr. Grubbs: On behalf of the Excise Board, J. M. Grubbs, member, makes the following statement with reference to the assessment under consideration at this time; on June 22, 1931, the Indian Territory Illuminating Oil Company appeared before this Equalization Board and [fol. 108] urged the elimination of this item of $20,537.56

on the grounds that the property was located on an Indian Lease, and cited an opinion by Judge Robert L. Williams, United States District Judge for the Eastern District of Oklahoma, and from a careful examination of said opinion, a motion was made by J. M. Grubbs, and seconded by W. W. Myatt, that this item be eliminated, as shown by the following excerpt from the minutes of that date, to-wit: "Motion by J. M. Grubbs, seconded by W. W. Myatt, to eliminate the item of $20,537.56 on drilling equipment on the southeast quarter of section seven, township nineteen north, range six east of the Indian Meridian, of the Indian Territory Illuminating Oil Company's tax assessment. Motion carried." At that time it was not urged that the two items returned under protest, of $42,602.13 and the other, $49,600.00 be eliminated, and these items were not considered by the board at said time.

By Mr. Wilhite: The Indian Territory Illuminating Oil Company at this time renounces any claim of exemption from ad valorem taxation on the nine empty steel tanks and the one cannon of the aggregate value of $49,600, and agrees that said protest on said items may be dismissed.

By Mr. Grubbs: That thereafter, on the 6th day of November, 1931, said motion above quoted was rescinded by action of the Board, according to the minutes, to-wit: "Motion by J. M. Grubbs, seconded by W. W. Myatt that the action of the Board in eliminating the item of $20,537.56 of the Assessment of the Indian Territory Illuminating Oil Company, made June 22, 1931 be reconsidered [fol. 109] and rescinded, and said item allowed to stand as originally made. Motion carried."

By Mr. Wilhite: I want to introduce at this time as an exhibit, the original tax assessment list as filed by the Indian Territory Illuminating Oil Company with the County Assessor on the 14th day of February, 1931, and ask leave of this Board at this time to withdraw the original and file in lieu thereof a carbon copy showing an acceptance of said return by the county assessor.

By Mr. Jenkins: No objections.

By Mr. Grubbs: It will be admitted.

(Thereupon, the original tax assessment list having been offered and admitted in evidence, and a carbon copy filed in lieu thereof, the same is hereto attached and made a part of this record.)

Tax Assessment List—January 1, 1931

Payne County, Oklahoma.

List or schedule of property, in the taxing municipalities hereinafter set forth, in the County of Payne, State of Oklahoma, owned, operated or under control of Indian Territory Illuminating Oil Company, Post Office Address: Drawer "L" Bartlesville, Oklahoma, engaged in the production of oil and gas on January 1, 1931.

[fol. 110]

Located in School District Consolidated No. 6, Union Township. Oil in Storage and Steel Tankage on the W½ SE¼ of Section 15–17N–5E—On Vockrodt Tank Farm

Tank No.	Age of tanks years	Age of oil years	True gravity oil	Amount oil barrels	Rate per barrel	Value	Amount extended for assessment
507	Over 7	1–5	35.9	48,281	$.55	$26,554.55	
516	Over 7	1–5	35.9	48,055	.55	26,430.25	
517	Over 7	1–5	36.2	47,440	.57	27,040.80	
518	Over 7	1–5	36.	47,577	.57	27,118.89	
519	Over 7	1–5	36.	48,211	.57	27,480.27	
528	Over 7	1–5	36.5	47,682	.57	27,178.74	
529	Over 7	1–5	36.4	47,449	.57	27,045.93	
530	Over 7	1–5	36.9	47,197	.55	25,958.35	
531	Over 7	1–5	36.9	47,469	.55	26,107.95	
				429,361		240,915.73	
	9–55,000 bbl. tanks over 7 years old, or 495,000 bbls. @ 10c					49,500.00	
						290,415.73	

Total value—School District Consolidated No. 6, Union Township $290,415.73

[fol. 111]

Located in School District No. 91, Eagle Township. Oil in Storage and Steel Tankage on E½ NE¼ of Section 35–19N–6E—On Spencer Tank farm

Tank No.	Age of tanks years	Age of oil years	True gravity oil	Amount oil barrels	Rate per barrel	Value	Amount extended for assessment
1025	Over 7	Empty	....	.....	....	.....	
1026	Over 7	1–5	37.5	36,782	$.59	$21,701.38	
1027	Over 7	1–5	37.5	37,342	.59	22,031.78	
1028	Over 7	1–5	37.8	37,681	.59	22,231.79	
1029	Over 7	1–5	37.5	10,287	.59	6,069.33	
1030	Over 7	Empty	....	.....	....	.....	
1031	Over 7	Empty	....	.....	....	.....	
1040	Over 7	1–5	37.2	35,484	.59	20,935.56	
1041	Over 7	1–5	37.3	37,034	.59	21,850.06	
1042	Over 7	1–5	37.5	37,128	.59	21,905.52	
1043	Over 7	1–5	37.5	37,042	.59	21,854.78	
				268,780		158,580.20	
	11–55,000 bbl. tanks, over 7 years old of 605,000 bbls. @ 10c					60,500.00	
						$219,080.20	

Total value—School District No. 91, Eagle Township $219,080.20

[fol. 112] School District No. 91, Eagle, Township (Continued.)

The following rendered under protest and exception claimed from ad valorem valuation and taxes:

72,207 bbls. oil produced from lands of restricted Indians of Five Civilized Tribes (stored in tanks on E½ NE¼ Section 35-19N-6E), Gravity 37 degrees, from 1 to 5 years of age @ 59¢ $42,602.13.

Located in School District No. 102, Eagle Township steel tankage on east 56½ acres of the E½ of SE¼ of section 35–19N–6E on Spencer tank farm:

Quantity	Article of property	Rate	Value	Amount extended for assessment
9	Empty steel tanks, 55,000 bbls. each, more than 7 years old (Nos. 1024, 1032, 1033, 1034, 1035, 1037, 1038 and 1039) or 495,000 bbls.	$.10	$49,500.00	
1	Cannon	...	100.00	
			$49,600.00	
Total value—School District No. 102, Eagle Township				$49,600.00

Located in School District No. 103, Eagle Township Personal property situated on SE¼ of section 7-19N-6E—on Wilson Moore Farm, used in connection with the operation of wells Nos. 1 to 9, inclusive for the production of oil and natural gas:

[fol. 113]

Quantity	Article of property	Rate	Value	Amount Extended for Assessment
1	Dwelling, portable	.....	$265.95	
1	Garage	.....	45.87	
1	House, tool	.....	20.48	
9	Engines, gas 25 HP	$175.00	1575.00	
1	Pump, 4 HP	.....	80.00	
8	Derricks, pumping wood	100.00	800.00	
1	Derrick, pumping, wood	.....	100.00	
2	Tanks, steel 105 bbl.	.15	31.50	
1	Tank, steel, 65 bbl.	.15	9.75	
9	Tanks, wood 250 bbl.	.25	562.50	
389′	Casing, 15½″ steel	1.00	389.00	
9406′	Casing, 8¼″ steel	.29	2727.74	
23272′	Casing, 6 5/8″ steel	.225	5236.20	
12295′	Casing 5 3/16″ steel	.175	2151.62	
27986′	Tubing 2″—steel	.06	1679.16	
27986′	Rods, sucker—¾″	.02	559.72	
6200′	Pipe, line (6 5/8 csg.)	.225	1395.00	
16610′	Pipe, line, 2″	.05	830.00	
	Miscl. Pipe fittings, supplies and all other property	.....	1984.87	
Total value School District No. 103, Eagle Township				$20,537.56

[fol. 114]

Summary

State.....$579,633.49
County..... 579,633.49

School Districts	Valuation Townships		
	Eagle	Union	Total
No. 91	$219,080.20		$219,080.20
No. 102	49,600.00		49,600.00
No. 103	20,537.56		20,537.56
Consol No. 6		$290,415.73	290,415.73
Total	$289,217.76	$290,415.73	$579,633.49

(Stamp:) Approved Originating Dept. HMP. Legal dept. Subs'nce Execut'N CEW.

STATE OF OKLAHOMA,
County of Washington, ss:

I, the undersigned affiant, do solemnly swear or affirm, that I am secretary of Indian Territory Illuminating Oil Company; that I have read the within and foregoing statement and schedule, and am familiar with the statements therein contained; that each and all of such statements are true, and that said statement and schedule contains a full, true, complete and correct list and valuation of the personal property of said company in Payne County, Oklahoma, as it existed on January 1, 1931.

E. B. Emenhiser, Secretary.

Subscribed and sworn to in my presence on this 11 day of Feb. 1931. Chas Farr, Notary Public. My commission expires Aug. 16, 1933. (Seal.)

[fols. 115-126] I hereby acknowledge receipt of the original copy hereof filed in my office on this 14 day of Feby. 1931.

M. E. Basil, Assessor, Payne County.

By Mr. Wilhite: The Indian Territory Illuminating Oil Company at this time introduces in evidence the original oil and gas mining lease covering the southeast quarter (SE@) of section seven (7), township nineteen (19) north, range six (6) east, Payne County, Oklahoma, and asks

leave to withdraw the original and file in lieu thereof, photostat copy.

By Mr. Jenkins: No objections.

By Mr. Grubbs: It will be admitted.

(Thereupon, the original oil and gas mining lease having been offered and admitted in evidence, and permission granted to withdraw the original and file in said cause a photostat copy thereof, the same is hereto attached and made a part of this record.)

Omitted. Printed side page 66, ante.

[fols.127-129] By Mr. Wilhite: We also ask leave to admit in evidence the assignment of said oil and gas lease from the original lessee to this company, and ask leave to withdraw such original and file a photostat copy.

By Mr. Grubbs: It will be admitted.

Omitted. Printed side page 78, ante.

[fol. 130] By Mr. Wilhite: It is stipulated and agreed that the Indian Territory Illuminating Oil Company, on January 1, 1931, as shown by its return, had in storage 72,207 barrels of crude oil of 37° gravity, from 1 to 5 years of age, which oil was produced by said company from lands owned by a restricted Indian, to-wit: Lavina Walker, Seminole Full Blood, Roll No. 1577, and that said company, in its return, returned said oil under protest and claimed exemption from ad valorem taxation thereon.

[fol. 131] By Mr. Wilhite: The Indian Territory Illuminating Oil Company at this time offers in evidence photostat copies of the original oil and gas mining lease executed February 27, 1930, by Lavina Walker, to W. C. Terry, together with photostat copies of assignments respectively from W. C. Terry to J. W. Sharp, from J. W. Sharp to H. C. Pouder, from H. C. Pouder to W. H. Pomeroy and from W. H. Pomeroy to this company.

(Thereupon, photostat copies of the original oil and gas mining lease from Lavina Walker to W. C. Terry, together

with Photostat copies of assignments from W. C. Terry to J. W. Sharp, from J. W. Sharp to H. C. Pouder, from H. C. Pouder to W. H. Pomeroy, and from W. H. Pomeroy to the Indian Territory Illuminating Company, having been offered and admitted in evidence, the same are hereto attached and made a part of this record.)

ITIO Lease No. 871. Louina Walker. No. 10078

Form A, Series 1908—Approved April 20, 1908

Amended February 6, and June 29, 1911

Volume 154, Page 290

(Stamp:) Received Mar. 1, 1922.
(Stamp: Received Supt. Five Civ. Tribes, cashier Mar. 26, 1920. 26355.
(Stamp:) Received May 3, 1921, Supr. Five Civilized tribes. 31632.
(Stamp:) Office of Indian Affairs. Received Apr. 17, 1920. 33143.
(Stamp:) Office of Indian Affairs. Received Apr. 28, 1922. 24410.
(Stamp:) Department, received Jun. 10, 1921, No. 3663. Supt. Five Civilized tribes.
(Stamp:) Office of Indian Affairs. Received May 26, 1921.. 43300. Royalty No. 62172

(All of the above are stamped on the face of the lease.)

[fol. 132] Oil and Gas Mining Lease Upon Land Selected for Allotment

Seminole Nation, Oklahoma

This indenture of lease, made and entered into in quadruplicate on this 27th day of February, A. D. 1920, by and between Louina Walker of Seminole, Oklahoma, enrolled as a full blood citizen of the Seminole Nation, Roll No. 1577, of the first part hereinafter designated as lessor, and W. C. Terry of Okmulgee, Oklahoma, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908 (35 Stat. L. P. 312).

Witnesseth:

1. The lessor, for and in consideration of one dollar, the receipt whereof is hereby acknowledged, and of the royalties, covenants, stipulations and conditions hereinafter contained, and hereby agreed to be paid, observed and performed by the lessee, does hereby demise, grant, lease, and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the oil deposits and natural gas in or under the following described tract of land, lying and being within the county of Seminole and State of Oklahoma, to-wit: The east half of the southeast quarter of section 15; and the northeast quarter of the northeast quarter of section 22, township 8, range 6 of the Indian Meridian, and containing 120 acres, more or less, with the exclusive right to prospect for, extract, pipe, store and remove oil and [fol. 133] natural gas, and to occupy and use so much, only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance, to be calculated from the date of commencement of utilization; provided, however, in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty, which will become effective as a part of this lease; provided, further, that in case of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such extent that the gas is unfit for ordi-

nary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the [fol. 134] lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there shall be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which cannot profitably be utilized at the rate herein prescribed shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desires to retain as producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from the date of discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for lessor, as advanced annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance for the first and second years; thirty cents per acre per annum, annually, in advance for the third and fourth years; seventy five cents [fol. 135] per acre per annum, annually, in advance, for the fifth year; and one dolar per acre per annum, annually, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance

royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evi- [fol. 136] dencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligations to pay such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the

parties hereto that offset wells shall be drilled or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirements shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land [fol. 137] and suffer none to be committed upon the portion in his occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said building and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting tools, derricks, boiler, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil bearing stratum, or in the manner required by the laws of the State of Oklahoma.

6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and [fol. 138] all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in operating said property and also upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty.

7. The lessee may at any time, by paying to the Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, all amounts then due as provided herein and the further

sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder; provided, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office; provided, further, in event restrictions are moved from all leased premises, the lessee may surrender all the undeveloped portion thereof by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible and next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease; provided, however, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates [fol. 139] of royalty or payment thereunder, of the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of all of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right, at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or bonds as may be required by said secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian Office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with

responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of [fol. 140] the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the First National Bank of Seminole, Okla., or such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators successors and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

Louina Walker. (Thumbprint.) (Seal.) W. C. Terry.

Two witnesses to execution by lessor: R. W. Michael, Okmulgee, Oklahoma. R. G. Baugh, Jr., Okmulgee, Oklahoma.

Two witnesses to execution by lessee: R. G. Baugh, Jr., Okmulgee, Oklahoma. S. M. Anderson, Okmulgee, Oklahoma.

(Stamp:) Department, received Apr. 30, 1920. Encl. to No. 2340. Supt. Five Civilized Tribes.

[fol. 141] State of Oklahoma,
County of Okmulgee, ss:

Before me, a notary public in and for said county and state, on this 27th day of February, 1920, personally ap-

peared Louina Walker to me known to be the identical person who executed the within and foregoing lease, by her mark, in my presence and in the presence of R. W. Michael & R. L. Baugh, Jr., as witnesses, and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Sylverster W. Rose, My commission expires Apr. 2, 1923. (Seal.)

Department of the Interior

Office of the Superintendent of the Five Civilized Tribes

Muskogee, Okla. Apr 13, 1920.

The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be approved. See my report of even date.

Joe H. Strain, Superintendent for Five Civilized Tribes.

Department of the Interior

Office of Indian Affairs

Washington, D. C. Apr. 21, 1920.

Respectfully submitted to the Secretary of the Interior, with recommendation that it be approved.

E. B. Merrit, Assistant Commissioner.

Department of the Interior, Washington D. C. Apr. 24, 1920.

Approved. A. G. Kopelius, Assistant Sec-tary of the Interior.

[fol. 142] Filed in the office of the Superintendent for the Five Civilized Tribes this 26 day of Mch. 1920, at 3 o'clock p. m.

Gabe E. Parker, Superintendent, by Assistant.

(Stamp:) Department, Received Mar. 18, 1922. No. 17250. Supt. Five Civilized Tribes.

Lease No. 42147

June 4, 1921.

Department of the Interior, Washington, D. C.

The assignment of this lease by W. C. Terry of all his interest to J. W. Sharp, is approved, effective only from date of approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

F. M. Goodwin, Assistant Secretary.

Lease No. 42147

May 5, 1922.

Department of the Interior, Washington, D. C., May 5, 1922

The assignment of this lease by J. W. Sharp to H. C. Pouder is approved, effective only from date of approval subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the [fol. 143] Interior, and the royalty shall be 12½ per cent on such price basis.

F. M. Goodwin, Assistant secretary.

Lease No. 42147

Department of the Interior, Washington, D. C.

Mar. 31, 1923.

The assignment of this lease by H. C. Pouder of all his interest to W. H. Pomeroy is approved, effective only from da-e of approval, subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared

by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

F. M. Goodwin, Assistant Secretary.

STATE OF OKLAHOMA,
Seminole County:

I hereby certify that this instrument was filed for record in my office on the 12 day of March, 1924 at 1 p. m. and duly recorded in record 154 on page 290.

Ellis Cooper, County Clerk, by R. E. Caldwell, Deputy.

ITIO Lease No. 871. Louina Walker

Assignment of Oil and Gas Lease

Whereas, the Secretary of the Interior has heretofore approved an oil and gas mining lease dated February 27th, 1920, entered into by and between W. C. Terry of Okmulgee, Oklahoma, lessee and Louina Walker of Semi- [fol. 144] nole, Oklahoma, lessor covering the following described lands in the Seminole Nation, Oklahoma, East half of the southeast quarter (E½ SE¼) of section fifteen (15); and the northeast quarter (NE¼) of the northeast quarter (NE¼) of estcion twenty two (22), township eight (8) north, range six (6) east.

Now, therefore, for and in consideration of one ($1.00) dollars, the receipt of which is hereby acknowledged, the said W. C. Terry, the lessee in the above described lease, hereby bargains, sells, transfers, assigns and conveys all his right, title and interest of the lessee in and to said lease, subject to the approval of the Secretary of the Interior to J. W. Sharp of Okmulgee, Oklahoma. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof, the said lessee has hereunto set his hand and seal this 27th day of April, 1921.

W. C. Terry.

STATE OF OKLAHOMA,
County of Okmulgee, ss:

Before me, Orella M. Robe, a notary public in and for said county and state, on this 27th day of April, 1931 per-

sonally appeared W. C. Terry to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Orella M. Robe, Notary Public. My commission expires June 20, 1924. (Seal.)

[fol. 145] Acceptance by Assignee

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set his hand and seal this 27th day of April, 1921.

J. W. Sharp.

STATE OF OKLAHOMA,
County of Seminole, ss:

I hereby certify that this instrument was filed for record in my office the 12 day of Mch. A. D. 1924 at 1 o'clock p. m. and duly recorded in record 156 page 197.

Ellis Cooper, County Clerk, by R. E. Criswell.

ITIO Lease No. 871. Louina Walker

Assignment of Oil and Gas Lease

Whereas, the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated February 27th 1920, entered into by and between Louina Walker, lessor and W. C. Terry, lessee covering the following described lands in the Seminole Nation, Oklahoma; East half of southeast quarter of section 15; and the northeast quarter [fol. 146] of the northeast quarter of section 22, township 8, range 6; and

Whereas, on the 27th day of April, 1921, W. C. Terry, the lessee, assigned all his interest to J. W. Sharp, said

assignment being approved by the Secretary of the Interior on June the 4th, 1921.

Now therefore, for and in consideration of one ($1.00) dollars, the receipt of which is hereby acknowledged, the said J. W. Sharp the assignee in the above-described lease hereby bargains, sells, transfers, assigns, and conveys all his right, title, and interest in the lessee in and to said lease, subject to the approval of the Secretary of the Interior to H. C. Pouder of Tulsa, Okla. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof, the said assignee has hereunto set his hand and seal, this 9th day of March, 1922.

J. W. Sharp.

STATE OF OKLAHOMA,
County of Okmulgee, ss:

Before me, Orella M. Robe, a notary public in and for said county and state, on this 9th day of March, 1922, personally appeared J. W. Sharp to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Orella M. Robe, Notary Public. My commission expires June 29, 1924. (Seal.)

[fol. 147] Acceptance by Assignee

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set my hand and seal this 11th day of March, 1922.

H. C. Pouder.

STATE OF OKLAHOMA,
Seminole County, ss:

I hereby certify that this instrument was filed for record in my office the 12 day of Mch. A. D. 1924 at 1 o'clock P. M. and is duly recorded in record 156 page 199.

Ellis Cooper, County Clerk, by R. E. Crisewell.

ITIO Lease No. 871. Louina Walker

Assignment of Oil and Gas Lease

Whereas, the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated February 27 1920 entered into by and between W. C. Terry, lessee and Louina Walker, lessor, covering the following described lands in the Seminole Nation, Oklahoma: East half of southeast quarter of section 15, and the northeast quarter of [fol. 148] northeast quarter of section 22, township 8 range 6.

Now, therefore, for and in consideration of one ($1.00) dollars, the receipt of which is hereby acknowledged, H. C. Pouder, assignee of the lessee in the above described lease, hereby bargains, sells, transfers, assigns, and conveys all his right, title and interest of the lessee in and to said lease, subject to the approval of the secretary of the Interior to W. H. Pomeroy of Tulsa, Oklahoma. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof, the said lessee has hereunto set his hand and seal this 21st day of February, 1923.

H. C. Parker.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, Edna B. Faris, a notary public in and for said county and state, on this 21st day of February, 1923, personally appeared H. C. Pouder to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Edna B. Faris, Notary Public. My commission expires Sept. 25, 1923. (Seal.)

Acceptance by Assignee

The assignee in the above and foregoing assignment made [fol. 149] subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set his hand and seal this 21st day of February, 1923.

W. H. Pomeroy.

STATE OF OKLAHOMA,
Seminole County, ss:

I hereby certify that this instrument was filed for record in my office the 12 day of Mch. A. D. 1924, at 1 o'clock p. m. and duly recorded in book 156 page 195.

Ellis Cooper, County Clerk, by R. E. Criswell.

ITIO Lease No. 871. Louina Walker

Assignment of Oil and Gas Lease

Whereas, the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated February 27th 1920, entered into by and between Louina Walker, lessor and W. C. Terry, lessee, covering the following described lands in the Seminole Nation, Oklahoma; East half of the southeast quarter of section 15, and the northeast quarter of the northeast quarter of Section 22, township 8, range 6.

Now, therefore, for and in consideration of one ($1.00) [fol. 150] dollars, the receipt of which is hereby acknowledged, W. H. Pomeroy assignee of the assignee of the lessee in the above described lease, hereby bargains, sells, transfers, assigns and conveys all his right, title and interest of the lessee in and to said lease in so far as it covers the east half of the southeast quarter of section 15, township 8 range 6 subject to the approval of the Secretary of the Interior to the Indian Territory Illuminating Oil Company of Bartlesville, Okla. Said assignment to be effective from the date of approval hereof by the Secretary of the Interior.

In witness whereof, the said lessee has hereunto set his hand and seal this 9th day of February, 1924.

W. H. Pomeroy.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, Edna B. Faris, a notary public in and for said county and state, on this 9th day of February, 1924 personally appeared W. H. Pomeroy to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Edna B. Faris. My commission expires Sept. 25, 1927. (Seal.)

Acceptance by Assignee

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the In- [fol. 151] terior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

Witness whereof the said assignee has hereunto set its hand and seal this 25th day of February, 1924.

Indian Territory Illuminating Oil Company, by Burdette Blue, Vice President. (Seal.)

Attest: C. H. Caldwell, Secretary.

STATE OF OKLAHOMA,
Seminole County, ss:

I hereby certify that this instrument was filed for record in my office the 7 of April, A. D. 1924 at 8 o'clock a. m. and was duly recorded in record 161 page 202.

Ellis Cooper, County Clerk.

By Mr. Wilhite: That is all of our evidence, Mr. Grubbs.

By Mr. Grubbs: I will make a motion we overrule the protest.

By Mr. Myatt: I second the motion.

By Mr. Melton: The motion carried.

By Mr. Wilhite: From which order, ruling and decision of the County Board of Equalization the Indian Territory [fol. 152] Illuminating Oil Company gives notice of its intention to appeal to the District Court of Payne County, Oklahoma.

And this is all of the evidence and testimony offered or introduced in the above hearing.

BEFORE THE BOARD OF EQUALIZATION IN AND FOR PAYNE COUNTY, OKLAHOMA

In the Matter of the Protest of Indian Territory Illuminating Oil Company on Assessment of Personal Property for the Year 1931-1932

JOURNAL ENTRY

Now on this 18th day of November, 1931, the above entitled matter comes on to be heard before the Board of Equalization of Payne County, Oklahoma, said Board being regularly in session and all members thereof being present, and said Company being represented by its attorney, C. E. Wilhite, and Payne County, Oklahoma, being represented by its County Attorney, Ernest F. Jenkins, and all parties announcing ready, said cause proceeds to hearing.

Whereupon, complainant, Indian Territory Illuminating Oil Company, introduces evidence in support of the items of its complaint, and in addition, certain facts are stipu- [fol. 153] lated and agreed to, as shown by the transcript wherein such stipulation and agreed statement was dictated into the record made by the County Court Reporter, and upon conclusion and presentation of such evidence, complainant rests; that no evidence is offered by the county attorney, who rests, and said Board, being advised in the premises, finds:

That said property claimed exempt from ad valorem taxation, to-wit: certain personal property located on what is known as complainant's "Wilson-Moore lease", described

as the southeast quarter of section 7, township 19 north, range 6 east, Payne County, Oklahoma, and the further item of 72,207 barrels of crude oil, produced from lands owned by — restricted Indian, and stored in tanks on the east half of the northeast quarter of section 35, township 19 north, range 6 east, I. M. Payne County, Oklahoma, of the values respectively of $20,537.56 and $42,602.13 should not be held so exempt from ad valorem taxation, and that the claim of Complainant of such exemption should be denied.

It is therefore by the Board of Equalization, ordered by motion of J. M. Grubbs, seconded by W. W. Myatt, which motion was carried, that the claim of exemption from ad valorem taxation on said property above described, be and the same is hereby denied.

To which decision of said Board, said complainant by and through its attorney, gave notice of appeal from said decision, to the District Court of Payne County, Oklahoma.

[fol. 154] Dated this day and date first above set forth.

C. A. Melton, Chairman, Board of Equalization.

OK: C. E. Wilhite, Attorney for complainant Ernest F. Jenkins, County Attorney.

Indorsed on Back: Before Board of Equalization of Payne County, Okla. Protest of I. T. I. O. Journal entry. Filed Nov. 18, 1931. V. A. Doty, County Clerk, Payne County, Oklahoma.

(And thereafter, and on the 18th day of November, 1931, the Indian Territory Illuminating Oil Company gives notice of its intention to appeal to the District Court of Payne County, Oklahoma, which notice is in words, letters and figures as follows, to-wit:)

BEFORE THE BOARD OF EQUALIZATION IN AND FOR PAYNE COUNTY, OKLAHOMA

To the Board of Equalization of Payne County, Oklahoma, the Honorable County Assessor of Payne County, Oklahoma, and the Honorable County Clerk of Payne County, Oklahoma, Greeting:

You, and each of you, are hereby notified that the Indian Territory Illuminating Oil Company, a corporation, in-

tends to, and does hereby appeal from the ruling, order and decision of said Board of Equalization, to the District Court of Payne County, Oklahoma, as provided by law.

That said Appeal is perfected for and on account of an order made by said Board of Equalization denying a claim of exemption from ad valorem taxation on behalf of appel- [fol. 155] lant company, wherein it was urged before said Board that said property, to-wit:

Personal property, including house, garage, derricks, tool house, casing, engines, and miscellaneous equipment, located on Appellant's "Wilson-Moore farm" otherwise described as the southeast quarter of section 7, township 19, north, range 6 E. I. M. Payne County, Oklahoma, and

72,207 barrels of crude oil, in storage, produced by complainant and appellant from land owned by a restricted Indian, to-wit: Lavina Walker, Seminole Full blood, Roll No. 1577, and stored on appellant's "Spencer Tank farm", located on the east half of the northeast quarter of section 35 township 19 N. range 6 E. I. M. Payne County, Oklahoma was exempt from ad valorem taxation for the reasons: (1) That said personal property first above listed, is property used in the actual operation for oil and gas and used in the actual production of oil and gas from a producing lease and that the lands from which such production is had and and on which said property is stored is land owned by a restricted Indian, and or his heirs and that such restrictions have not been removed, and (2) that the cride oil in storage was produced by appellant from land owned by a restricted Indian, under terms of an oil and gas mining lease approved by the United States Department of Interior and that in the production thereof, Appellant was and is a governmental instrumentality and that such oil, being non-taxable at its source, is not subject to ad valorem [fol. 156] taxation at any time before the same is marketed.

You are notified that said appellant intends to, and will, prosecute its appeal from the decision of said Board to the District Court of Payne County, Oklahoma, as above set forth. You will govern yourselves accordingly.

Dated this 18th day of November, 1931.

Indian Territory Illuminating Oil Company, Appellant, by C. E. Wilbite, its Attorney.

STATE OF OKLAHOMA,
County of Payne, ss:

Service of the foregoing notice of appeal is hereby acknowledged to have been made on each of us, the undersigned, by leaving a true copy thereof on this 18th day of November, A. D. 1931.

C. A. Melton, Chairman, Board of Equalization.
V. A. Doty, County Clerk, Payne County, Oklahoma.

(Stenographer's certificate following.)

(And plaintiff's exhibit "I" having been offered in evidence by the plaintiff, and rejected by the court, the same is set out here in words, letters and figures as follows, to-wit:)

[fols. 157-164] PLAINTIFF'S EX. "I"

Journal entry of judgment in the matter of the Assessment of Personal Property of the Indian Territory Illuminating Oil Company, a corporation, for the year 1931 omitted. Printed side page 28, ante.

[fol. 165] By Mr. Prentice: The plaintiff rests.

By Mr. Horton: Comes now the defendant and demurs to the testimony and evidence of the plaintiff for the reason that the evidence shows on its face that the plaintiff is not entitled to the relief prayed for in its petition, and for the further reason that the testimony and evidence do not support the allegations contained in the petition of the plaintiff.

By the Court: Over-ruled.

By Mr. Horton: Exception.

J. H. BLANKENSHIP is hereupon called as a witness on behalf of the defendant, and having been duly sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows, to-wit:

Direct examination.

By Mr. Horton:

Q. State your name?

A. J. H. Blankenship.

Q. What office, if any do you hold in Payne County, Oklahoma?

A. County Assessor.

Q. Were you the duly elected, qualified and acting county assessor of this county on January 1, 1933 and up until this time?

A. Yes, sir.

[fol. 166] Q. I will hand you what has been marked defendant's exhibit "1" and I will ask you to state what that is?

A. This, on last year, after their tax renditions were in, there had been some property listed by the I. T. I. O. upon which was on restricted Indian land and they claimed exemptions. and by your instruction, I run that on the tax roll and notified the company sometime in August last year.

Q. How did you give them notice?

A. I made the notice and registered the notice—the original of which that is a copy.

Q. Did you send it by registered mail?

A. Yes, sir.

Q. Did you or not require a return receipt?

A. I did.

Q. And did you get a return receipt?

A. Yes, sir.

Q. And is it attached to a copy of this notice?

A. Yes, sir, this is the original receipt I received.

Q. Do you testify that you sent a copy of that notice which I am showing you?

A. I sent the original.

Q. And retained the copy.

A. Yes, sir.

Q. And this is defendant's exhibit "1"?

A. Yes, sir.

By Mr. Horton: We offer defendant's exhibit "1" in evidence.

[fol. 167] By Mr. Prentice: Objected to as incompetent, irrelevant and immaterial.

By the Court: Well, let it be admitted.
By Mr. Prentice: Exception.

(Thereupon, defendant's exhibit "1" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

DEFENDANT'S EXHIBIT 1

Indian Territory Illuminating Company

Payne County, Oklahoma

List and Value of Property Used in and Around Producing Wells, Located in Eagle Township, School District No. 103

Personal Property situated on SE/4 Section 7-19N-6E, on Wilson-Moore farm, used in connection with the operation of well Nos. 1-2-3-4-5-6-7- and 9, for the production of Oil and natural gas.

	Rate	Value
1 Drilling, portable	.....	$185.00
1 Garage	.....	33.18
1 Tool house	.....	14.03
7 Engines, Gas, 25 HP	166.25	1163.75
1 pump, 4 HP	.....	62.70
1 water well equipment	.....	76.00
3 derricks, wood, pumping	72.32	216.96
2 derricks, Steel, pumping	95.00	190.00
2 tanks, steel—105 bbl. (Per bbl.)	.075	15.75
1 tank, steel—65 bbl. (Per bbl.)	.075	4.87
8 tanks, wood—250 bbl. (Per bbl.)	.125	250.00
[fol. 168]		
389' Casing, steel—15½"	.95	369.55
9406' Casing, steel—8¼"	.275	2586.65
20341' Casing, steel—6 5/8"	.21	4271.61
9208' Casing, steel—5 3/16"	.165	1519.32
24836' Tubing, steel—2"	.06	1490.16
24836' Rods, sucker ¾"	.02	496.72
6200' Pipe, line—6 5/8" csg	.15	930.00
16610' Pipe, line 2"	.02	332.20
1 Trailer, Truck—1¼ ton	.....	96.16
Miscellaneous pipe, fittings and other property	.....	1508.31
76 bbls. oil in stock tanks—37.90 gravity	.73	55.48
Total value, property used in and around producing wells		$15,869.23

I. T. I. O. Co., Bartlesville, Okla.

DEAR SIRS:

You are hereby notified that within 12 days from date of this notice the above described property will be placed on the Assessment rolls, later to be extended on the tax rolls, believing same to subject to ad valorem tax in this county.

Very truly, —— ——, County Assessor, Payne County.

Dated August 18th, 1933.

(Registered article return card attached as follows:)

[fol. 169] Post Office Department Official Business.
Registered Article No. 290.
Insured Parcel.
Penalty for private use to avoid payment of postate, $300.

Postmark of delivering office. (Stamp:) Bartlesville, Okla., Aug. 19, 1933, 10:30 A. M.

Return to J. H. Blankenship, County Assessor, Stillwater, Oklahoma.

(On the reverse side of same instrument:) Return receipt. Received from the postmaster the registered or insured article, the original number of which appears on the face of this card. Ind. Terr. Ill. Oil Co. Signature of addressee: Jack McReynolds, Signature of addressee's agent. —— ——. Date of Delivery Aug. 19, 1933.

Cross-examination.

By Mr. Prentice:

Q. When did you run this property upon the tax roll?

A. Sometime in the latter part of August. I think from our County Attorney's instructions, I run it on about 12 days after that notice. They told me I should give them 10 or 12 days notice, and I made the notice read 12 days.

Q. I hand you plaintiff's exhibit "A" which is the tax rendition made by the I. T. I. O. for 1933, that has been on file in your office.

A. Yes, sir.

[fol. 170] Q. Will you state whether or not that property which you give the notice on is located in the same township and school district as the other property rendered by the plaintiff in that rendition; is all the property of the plaintiff including the property set out in this notice located in Eagle Township?

A. This was in Eagle Township, and yes, in school District 103.

Q. I hand you plaintiff's exhibit "J" and ask you if that is your signature on that bottom of that exhibit?

A. The signature of my deputy.

By Mr. Prentice: We offer exhibit "J" in evidence.
By Mr. Horton: Objected to as incompetent, irrelevant and immaterial.
By the Court: Let it be admitted.
By Mr. Horton: Exception.

(Thereupon, plaintiff's exhibit "J" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

PLAINTIFF'S EXHIBIT J

Indian Territory Illuminating Oil Company and Subsidiary Companies

Bartlesville, Oklahoma,
October 15, 1933.

Payne County Assessor, Stillwater, Oklahoma.

DEAR SIR:

Please advise the approximate date you expect to certify the tax rolls to the county treasurer.
[fol. 171] Also, kindly indicate below the assessed valuation for the following property:

Real Property

As per the attached rendition—indicating the valuation opposite each fee

Personal Property

Eagle Township, S. D. #103, $1078.03.

We would appreciate a reply to this inquiry as soon as practicable.

Yours very truly, Indian Terr. Illum. Oil Co., by V. L. Hunt, Tax Department.

VLH: ES.

Reply

I expect to be able to certify my tax rolls about the 1st day of Jan., 1934.
I have indicated the assessed values as requested above.
Signed this 25 day of Oct., 1933.

J. H. Blankenship, Assessor for Payne County, Oklahoma.

Q. I call your attention to the notation on the bottom of this exhibit which is as follows "I expect to be able to certify my tax rolls about the 1 day of January, 1934. I have indicated the assessed values as requested above. Signed this 25 day of Oct., 1933. J. H. Blankenship, Assessor of Payne County, Oklahoma." And the other matter [fol. 172] appearing above that which shows personal property, Eagle Township, School District 103, $1078.03. Can you explain why you notified us in October that the personal assessment of our property for that township and school district was only $1078.03 and did not advise us at that time that you had run this other property on?

A. No, sir, I don't know how it come that that wasn't included in this notice, but I remember it is the custom of oil companies to ask for something like this when they file their assessments, and this assessment had been filed quite a bit before this time.

By the Court:

Q. Is that amount in there as in the assessment they returned?

A. Yes, sir.

Q. Doesn't include what you put on.

A. No, sir.

"That's all."

(Witness is excused.)

By Mr. Horton: Defendant rests.

By Mr. Prentice: Plaintiff rests.

By Mr. Horton: Comes now the defendant at the close of all of the testimony in the case and moves the court for judgment in its favor.

And this is all of the evidence offered and introduced in the trial of this case.

[fol. 173] Stenographer's certificate to foregoing transcript omitted in printing.

[fol. 174] IN THE DISTRICT COURT OF PAYNE COUNTY

[Title omitted]

MOTION FOR NEW TRIAL—Filed April 26, 1934

Comes now said defendant and moves the court to vacate and set aside the judgment rendered herein in the above entitled cause on the 26th day of April, 1934, and to grant a new trial for the following causes, which effect materially the substantial rights of said defendant.

1. That the judgment of the court is not sustained by sufficient evidence, or is contrary to law.

2. Error of law occurring at the trial, and excepted to by the defendant.

3. Error of the court in overruling the defendant's demurrer to the petition of the plaintiff.

4. Error of the court in overruling the defendants demur-
[fol. 175] rer to the evidence of the plaintiff.

5. Error of the court in overruling the motion of the defendant at the close of all the evidence for a judgment in its favor.

6. Error of the court in admitting incompetent and irrelevant and immaterial testimony and evidence on behalf of the plaintiff, said evidence being objected to by the defendant.

Guy L. Horton, County Attorney, Attorney for Defendant.

[File endorsement omitted.]

[fol. 176] IN THE DISTRICT COURT OF PAYNE COUNTY

[Title omitted]

JOURNAL ENTRY OF JUDGMENT, ETC.—Filed May 8, 1934

This cause coming on to be heard this 26th day of April, 1934, pursuant to regular assignment for trial before the Honorable Freeman E. Miller, Judge of the District Court of Payne County, Oklahoma, and the plaintiff appearing by

Donald Prentice, its attorney, and the defendant appearing by Guy Horton, County Attorney of Payne County, Oklahoma, and all parties announcing ready for trial, and the court after hearing the evidence and argument of counsel and being fully advised in the premises, and upon consideration thereof finds:

That on January 1, 1933, the plaintiff was the owner of a duly approved departmental oil and gas mining lease covering the southeast quarter of section 7, township 19 north, range 6 east, Payne County, Oklahoma, being the allotment of Wilson Moore, deceased, a restricted Pawnee Indian; said land now being owned by Belt Short Bear, Will Justice and Colonel Moore, a minor, restricted Pawnee Indians and heirs of the said Wilson Moore, deceased.

That the plaintiff drilled certain wells producing oil and [fol. 177] gas upon said land, and on January 1, 1933, had placed certain property, equipment and improvements upon said land, which were used in the operation of said wells and in the exploration and development of said lease and to produce and preserve the oil and gas therefrom in order of comply with the terms of said oil and gas mining lease, an itemized list of said property and its location being as follows, viz:

	Rate	Value
1 Dwelling, portable	.....	$185.83
1 Garage	.....	33.18
1 Tool house	.....	14.03
7 Engines, Gas, 25 HP	166.25	1163.75
1 pump, 4 HP	.....	62.70
1 water well equipment	.....	76.00
3 Derricks, wood, pumping	72.32	216.96
2 Derricks, Steel, pumping	95.00	190.00
2 tanks, steel—105 bbl. (Per bbl.)	.075	15.75
1 tank, steel—65 bbl. (Per bbl.)	.075	4.87
8 tanks, wood—250 bbl. (Per bbl.)	.125	250.00
389′ casing, steel—15½″	.95	369.55
9406′ casing, steel—8¼″	.275	2586.65
20341′ casing, steel—6 5/8″	.21	4271.61
9208′ casing, steel—5 3/16″	.165	1519.32
24836′ Tubing, steel—2″	.06	1490.16
24836′ Rods, sucker ¾″	.02	496.72
6200′ Pipe, Line—6 5/8″ csg	.15	930.00
16610′ Pipe, Line 2″	.02	332.20
1 Trailer, truck—1½ ton	.....	96.16
Miscellaneous pipe, fittings and other property	.....	1508.31
76 bbls. oil in stock tanks—37.9° gravity	.73	55.48
Total value—Property used in and around producing wells on rest. Indian Lands on which exemption is claimed		$15,869.23

The court further finds that within the time and the manner provided by law, plaintiff rendered to the County Assessor of Payne County, Oklahoma, a list and schedule of the property owned by it, located in Eagle Township, [fol. 178] School District No. 103, Payne County, Oklahoma, on January 1, 1933, which schedule contained an itemized list of the above described property, equipment and improvements, and further recited that the same was claimed to be exempt from ad valorem taxation in said county for the reason that the same was used in the development and operation of the aforesaid oil and gas mining leasehold estate covering said described restricted Indian land in order to produce oil and gas therefrom, and that the plaintiff in the exploration and development of said lease and in the use of said property was acting as a Federal instrumentality.

The court finds that the county assessor of Payne County, Oklahoma, placed all of the above described property, equipment and improvements upon the tax rolls of Payne County, Oklahoma, and assessed the same for taxation for the year 1933, and that the plaintiff paid the taxes levied thereon under protest and filed its petition in this cause to recover said taxes as provided by law.

The court also finds that on January 1, 1933, the above described property, equipment and improvements were located upon said restricted Pawnee Indian Oil and gas mining leasehold and that all of said property, except the one 1½ ton trailer, truck, was being actually used in and around the producing wells upon said described restricted land and in the operation of said oil and gas mining leasehold, and in the production of oil and gas therefrom, and that all of said property, with the exception of said trailer, is a necessary adjunct to the production of oil and gas, [fol. 179] without the use of which plaintiff could not produce oil and gas under the terms of said Departmental oil and gas mining lease.

The court further finds that plaintiff in the exploration and development of said lease and in the production of oil and gas therefrom, and in the placing of said described property, equipment and improvements thereon, with the exception of the trailer above mentioned, and in the use of said property for such purposes was and is operating as a Governmental agency and instrumentality, and that taxa-

tion of the same would constitute a tax upon and interference with the operations of a governmental agency in the performance of its governmental functions.

The court further finds that the one 1½ ton trailer, truck above mentioned is of the value of $96.16 and was not being used exclusively upon said described leasehold, and that the same was subject to taxation for the year 1933, and that the taxes in the amount of $4.10 levied thereon have been legally collected by the defendant herein.

The court further finds that the action of the county assessor of Payne County, Oklahoma, in placing said property on the tax rolls of said county, with the exception of the trailer above mentioned, and assessing the said property for taxation as of January 1, 1933, was without authority of law and the same should be stricken from the tax rolls and the taxes levied upon such property and heretofore paid under protest by the plaintiff to the defendant [fol. 180] herein in the amount of $672.62, have been illegally collected and the defendant should be ordered and directed to immediately refund said amount, together with interest thereon as provided by law, to the plaintiff.

It is therefore, ordered, adjudged and decreed by the court that the plaintiff in the exploration, development and operation of the above described departmental oil and gas mining leasehold covering said described restricted Pawnee Indian land, and in the placing of the said described property, equipment and improvement thereon, except the trailer above mentioned, and in the use of the same is and has been acting as a Governmental Instrumentality, and that said property is a necessary adjunct to the operation of said lease and to the production of oil and gas therefrom, and that taxation of said property would constitute a tax upon and interference with the operations of a governmental agency in the performance of its governmental functions and that the same is not subject to taxation in Payne County, Oklahoma, for the year 1933.

It is further ordered, adjudged and decreed by the court that the action of the county assessor in placing said described property, equipment and improvements, except the trailer above mentioned, upon the tax rolls of said county and assessing the same for taxation for the year 1933 was without authority of law, and that the same should be stricken from said tax rolls.

It is further ordered, adjudged and decreed by the [fol. 181] court that the taxes in the amount of $672.62, levied upon said property, equipment and improvements for the year 1933, and heretofore paid under protest by the plaintiff, were illegally collected by said defendant, and the defendant is hereby ordered and directed to immediately refund said amount, together with interest thereon as provided by law to the plaintiff.

To which judgment of the court the defendant then and there excepted and gave notice in open court of his intention to appeal to the Supreme Court of the State of Oklahoma.

It is, therefore, ordered and decreed that an extension of sixty days from this date be granted to said defendant to make and serve casemade, plaintiff to have ten days thereafter to suggest amendments, same to be settled on five days' notice in writing by either party.

Whereupon, defendant in open court filed his motion for a new trial in this cause, and the court having heard the argument of counsel and being fully advised, and upon consideration thereof finds that said motion for a new trial should be overruled.

It is therefore, ordered, adjudged and decreed, that the motion of the defendant for a new trial should be and the same is hereby overruled, to which ruling of the court defendant then and there excepted and gave notice in open court of his intention to appeal to the Supreme Court of the State of Oklahoma, and said defendant praying an appeal to the Supreme Court and extension of time within which to make and serve casemade, it is therefore ordered that an extension of sixty days from this date be granted [fol. 182] said defendant to make and serve casemade, plaintiff to have ten days thereafter to suggest amendments, and same to be settled upon five days' notice in writing by either party.

Freeman E. Miller, Judge.

O. K. Donald Prentice, attorney for plaintiff Guy L. Horton, attorney for defendant.

[File endorsement omitted.]

[fol. 183] IN DISTRICT COURT OF PAYNE COUNTY

RESOLUTION AUTHORIZING APPEAL—Filed June 2, 1934

Whereas, on the 26th day of April, 1934, the District court of Payne County, State of Oklahoma, following hearing in the case of Indian Territory Illuminating Oil Company, a corporation, plaintiff vs. George W. Tabor, Treasurer of Payne County, Oklahoma, defendant, No. 11774, rendered judgment in favor of said plaintiff and against said defendant, and,

Whereas, said case involves a considerable amount of taxes claimed by the defendant and said cause involves the question of the taxation of a class of property which will continue to exist in this county and upon which the final judication by the Supreme Court of this state is desirable.

Now, be it resolved, by the Board of County Commissioners of Payne County, Oklahoma, that Guy L. Horton, County Attorney, be, and he is hereby authorized and directed to perfect an appeal in said case to the Supreme Court of the State of Oklahoma, and take such steps as are necessary to fully present said case to said court and protect the interests of said county in said appeal.

Witness our hands this 21st day of May, 1934.

Board of County Commissioners, Payne County, Oklahoma, by Geo. Flesner, Chairman; J. M. Graves, T. A. Waller, Members. (Seal.)

Attest: V. A. Doty, County Clerk.

[fols. 184 & 185] I, V. A. Doty, County Clerk in and for said county and state do hereby certify that the foregoing resolution is a true, complete and correct copy of the original of the same on file and of record in my office.

Witness my hand and seal of my office this 2 day of June, A. D. 1934.

V. A. Doty, County Clerk. (Seal.)

[File endorsement omitted.]

[fol. 186] Certificate of Attorneys to case made omitted in printing.

[fol. 187] Service of case made omitted in printing.

[fol. 188] Clerk's certificate to foregoing record omitted in printing.

[fol. 189] Waiver of amendments to case made omitted in printing.

[fols. 190 & 191] Waiver of notice of time and place of settlement omitted in printing.

[fol. 192] [File endorsement omitted]

IN THE DISTRICT COURT OF PAYNE COUNTY, STATE OF OKLAHOMA

[Title omitted]

JUDGE'S CERTIFICATE TO CASE MADE—Filed August 13, 1934

STATE OF OKLAHOMA,
Payne County, ss:

I, the undersigned Judge of the District Court of Payne County, State of Oklahoma, do hereby certify that the foregoing was presented to me as a casemade in the action above entitled; that at the time of the presentation of said casemade to me for settlement and signing, there appeared no one for the plaintiff, and Guy L. Horton, Co. Atty. for the defendant; that there were no suggestions of amendments made to said casemade; and I now settle and sign the same as a true and correct casemade, and direct that it be attested and filed by the clerk of said court.

Witness my hand this 13th day of June, 1934.

Freeman E. Miller, District Judge.

Attest: Earl C. Grindstaff, Court Clerk, by Lillian Houston, Deputy. (Seal of Court Clerk of Payne County, Okla.)

[fol. 193] Certificate of filing omitted in printing.

[fols. 194-203] Motions for extensions of time to file brief, stipulations and orders thereon omitted in printing.

[fol. 204] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 25,794

GEORGE W. TABER, Treasurer of Payne County, Oklahoma, Plaintiff in Error,

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, a Corporation, Defendant in Error

OPINION—Filed March 12, 1935

SYLLABUS

1. A judgment holding certain personal property exempt from taxation for a given year because of the nature of the use of such property is not res adjudicate as to the liability of the same property for taxes for a subsequent year where the nature of the use of such property may change from year to year.

2. The lessee of restricted Indian land under a lease for oil and gas development purposes is an agent or instrumentality employed by the federal government for the development and use of such land to explore and produce oil therefrom for the benefit of its Indian wards. 271 U. S. 609, 70 L. Ed. 1112.

3. Personal property actually used by a lessee in the production of oil and gas or either from restricted Indian land is a part of a federal agency or instrumentality.

4. Without Congressional consent no federal agency or instrumentality can be taxed by state authority. 70 L. Ed. 1112.

Error from the District Court of Payne County, State of Okla.

Honorable Freeman E. Miller, Judge

Affirmed

Guy L. Horton, County Attorney, for Plaintiff in Error.

W. B. McGinnis, Fred M. Carter, Archibald Bonds, Donald Prentice, for Defendants in Error.

[fol. 205] RILEY, J.:

This is an appeal by the County Treasurer of Payne County from a judgment rendered in favor of the defendant in an action commenced by it, hereinafter referred to as plaintiff, to recover certain taxes paid under protest.

The principal question is whether the property assessed and upon which the tax was levied is taxable by the State of Oklahoma or its political subdivisions.

There is also a question raised as to whether the remedy of plaintiff, if any it had, was by way of appeal from the County Equalization Board.

The tax levied was for the year 1933, and the plaintiff contends that the question of whether said property was liable for taxes was as to the year 1933, res adjudicata in that *that* the same property, used for the same purpose, had been held exempt from taxes by a judgment of the District Court of Payne County, in an action involving taxes for the years 1931-1932, and that said judgment was not appealed from and necessarily decided the same question as here involved.

The property in question belonged to and was used by plaintiff in the development and operation of a departmental oil and gas lease owned by plaintiff and covering lands of a restricted Pawnee Indian allottee, known as the Wilson-Moore land.

Plaintiff made its return to the County Assessor showing that it had on said land certain equipment such as one pumping unit, one tank, certain casing, tubing, etc., of the total value of $1,078.03, in and around exhausted oil wells, [fol. 206] which it conceded was taxable, and other property on said land consisting of one dwelling, portable, one garage, one tool house, engines, pump, water well equip-

ment, tanks, derricks, casing, tubing, rods, pipelines, and one "trailer truck" of the aggregate value of $15,869.23, claimed to have been used in and around producing wells on restricted Indian Lands, and claimed as exempt from taxation.

Plaintiff alleged in its petition that the County Assessor accepted said list and schedule as rendered and assessed the property for taxation for the year 1933-34, as of the value of $1,078.07, exempting the property listed as being used in and about producing wells.

That thereafter, and without notice to plaintiff, the value of plaintiff's property was increased on the tax rolls to $16,947.29, thus including the property claimed as exempt, and that such increase was not made by the County Board of Equalization; that no notice of such increase was given plaintiff, and it had no knowledge thereof until January, 1934, when the taxes became due and payable, and, as to the property claimed to be exempt, were paid under protest. That at the time plaintiff discovered the increase the Payne County Board of Equalization had long since adjourned, and that plaintiff had no opportunity to appear before said Board and protest the increase, and if denied relief there, to appeal as provided by law.

It was also alleged that on February 24, 1933, the District Court of Payne County rendered a judgment holding [fol. 207] said property exempt from taxation for the year 1932-33, and that said judgment became final, and that there had been no change in the use of same, and that said judgment was res adjudicata as to the attempted assessment thereof for the year 1933-44.

A copy of said judgment was attached to the petition and made a part thereof.

Demurrer to the petition being overruled defendant answered by general denial.

Trial was had upon the issues resulting in a judgement for plaintiff, and defendant appeals.

The trial court, while holding the property exempt under the evidence refused to hold the question res adjudicata.

It may be said that there is conflict in the authorities on this question even where it is conceded that the facts are identical.

But in a case of this kind it is clear that the trial court was correct in its ruling on the question. It must be borne

in mind that the theory of plaintiff was that property owned by it and located on restricted Indian land which had in fact been used in the past in connection with the operation of producing wells, but which were no longer producing oil and gas, was taxable. That is that the derricks and equipment of "abandoned" wells are taxable. It can be readily seen that under the issues joined in this case, the defendant could if the facts warranted have shown that many of the wells had been abandoned and that [fol. 208] the status of the derricks and equipment in and about such wells had been changed in the course of one year. Unless it be conceded that the facts were the same, the rule of res adjudicata would not apply even in those jurisdictions where the rule prevailed.

It is contended that the court erred in holding exempt from taxation that part of plaintiff's property necessary and in fact used in and about the producing wells.

The land from which the oil was produced is restricted Indian land, not located in Osage County, and there could be no gross production tax collected, and plaintiff's property used in connection therewith could not be exempt under the "in lieu" provision of the gross production tax laws of the State.

We are bound by the holding of the Supreme Court of the United States in Gillespie v. State, 257 U. S. 501, 66 L. Ed. 338; Jaybird Mining Co. v. Weir, Co.. Treas., 271 U. S. 609, 70 L. Ed. 1112.

It is generally held that federal instrumentalities are not subject to a state tax. This rule has been recognized since the decision in McCulbch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579.

In the Gillespie case, supra, Gillespie was a lessee of restricted Indian lands. It was sought to enforce a tax on the net income derived by lessee from the sale of his share of oil and gas received under his leases.

In the opinion it is stated:

"It is agreed that the lessee was an instrumentality used by the United States in carrying out duties to the Indians that it had assumed, and that the only question in the case [fol. 209] is whether he is liable to this kind of tax."

After quoting from 240 U. S. 530, the following:

"A tax upon the leases is a tax upon the power to make them, and could be used to destroy the power to make them."

It is said:

"The stop from this to the invalidity of the tax upon income from the leases is not long."

In the Jaybird Mining case, supra, the mining company, had and was operating a mining lease on restricted Indian land. It was therein said:

"The lessee is an agency or instrumentality employed by the government for the development and use of the restricted land and to mine ores therefrom for the benefit of its Indian wards."

And:

"It is elementary that the Federal government in all its activities is independent of state control. This rule is broadly applied. And without Congressional consent no Federal agency or instrumentality can be taxed by state authority."

If the lessee is an instrumentality employed by the government for the development and use of the restricted Indian land, certainly the equipment used by the lessee in so doing is so essentially connected with such agency or instrumentality as to be a part thereof.

This being true such federal agency or instrumentality cannot be taxed by state authority without congressional consent. Such consent has not been given, and the inability of the state to tax same "no matter how reasonable, or how universal and undiscriminating, is well established.

Furthermore Section 6, of the lease provides:

"* * * and all sums due as royalty shall be a lien on [fol. 210] all improvements, tools, movable machinery and all other personal chattels used in operating said property, and upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty."

The power to tax would carry with it the power to enforce the tax by sale of the property and thus interfere with the lien in favor of the lessor.

The lease also provides:

"* * * the lessee shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines, and machinery, and the casing of all dry or exhausted wells, which shall remain the property of the lessee and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; * * * ."

Therefore the garage and tool house, and possibly the dwelling, though listed as "portable", when placed upon the premises became the property of the owner of the land as a part of the consideration for the lease, and was not subject to taxation.

It is suggested that the property should be held liable to taxation under the rule announced in Thomas v. Gay, 169 U. S. 264, 42 L. Ed. 740; Wagoner v. Evans, 170 U. S. 588, 42 L. Ed. 1154, and other cases of a similar nature. These cases were doubtless considered in Jaybird Mining Co. v. Weir, supra, since they were cited by Mr. Justice Brandeis in his dissenting opinion.

Thomas v. Gay, supra, and many of the cases cited by defendant herein, were cited by the author of the opinion in Weir v. Jaybird Mining Co., 104 Okla. 271. If ore belong- [fol. 211] ing to the lessee after it had been extracted from the restricted lands in the possession of the lessee and stored in bin, and clearly personal property under the law, was not taxable because the lessee was a federal agency or instrumentality employed by the government for the development and use of restricted Indian land, and for the benefit of its Indian wards, we would be reluctant to hold that its machinery, tolls and other necessary equipment used in the production of the oil would be taxable, although it is said by way of dicta in In Re Skelton, etc., 81 Okla. 134, that the

"plants, mills, smelters and machinery * * * are subject to the same rate of property tax which other property bears." But that case was decided before the Gillespie case, supra, and the Jaybird Mining Co., case, supra.

As we understand the two latter cases they, and particularly the Jaybird Mining Co., case, in effect overrule In Re Skelton, etc., supra.

It is contended that plaintiff herein has not availed itself of the proper remedy in that it should have appeared before the Board of Equalization as provided in Section 12646 O. S. 1931, as amended by Section 6, Ch. 115, S. L. 1933.

The contention is entirely without merit. Plaintiff alleged and the evidence shows that it had no notice whatever of the change in the assessment until long after the first Monday in June, 1933, when by law the sessions of the Equalization Board must close under said Section as amended.

As late as October 25, 1933, the County Assessor of Payne County, by letter, in response to an inquiry from plaintiff, [fol. 212] informed plaintiff that the assessed value of plaintiff's property in the particular township in which the land was located was $1078.03, the exact amount in which it was rendered.

It also appears reasonably certain that the change in the assessment was not made until late in August, 1933, and not then by the Board of Equalization, but by the County Assessor under the direction of the County Attorney. No chance whatever was given plaintiff to present its grievance to the Board of Equalization.

If the County Attorney did as a matter of fact instruct the County Assessor to make the change long after he knew the Board of Equalization had adjourned finally and when he knew the Board could not legally hold a session, he should not be heard to urge the advantage thus sought to be gained.

Judgment affirmed.

McNeill, C. J., Busby, Phelps, Gibson, JJ., Concur.

[File endorsement omitted.]

[fol. 213] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING—Filed March 26, 1935

Comes now the plaintiff in error and respectfully represents and states that on the 12th day of March, 1935, this Honorable Court rendered a certain decree, judgment and opinion, sustaining the judgment rendered in the above styled cause in the District Court of Payne County, and in effect and in fact held that the property employed by a Federal instrumentality is not subject to ad valorem taxation by the State of Oklahoma and its municipal subdivisions.

1. That said decision is in conflict with former decisions of this Honorable Court, which were overlooked by counsel and the Court, which are decisive of the identical question herein determined. In re Gross Production Tax of Wolverine Oil Co., 53 Okla. 24, 154 Pac. 362; In re Protest of Bendelari, Agent, 82, Okla. 97, 198 Pac. 606; Central Coal and Lumber Co. vs. Board of Equalization, 70 Okla. 131, 173 Pac. 442.

2. That said decision is in conflict with the decisions of the Supreme Court of the United States upon the same subject, which decisions were overlooked by this Honorable Court, although called to the attention of the Court by the plaintiff in error, in that the Court failed to distinguish be-
[fol. 214] tween the right of a state to levy a tax upon the instrumentality or means employed by the general government to carry out its powers, and the right of a State to levy a non-discriminatory tax upon the property of an agent employed in the performance of such agency. A tax upon the property of such agent, such as involved in the case at bar, is not an interference with the exercise of any power belonging to the general government, and is prohibited by no constitutional implication.

3. The court further held herein that the property was not subject to taxation by reason of the fact that the lease provided that the royalty payable under the lease "shall be a lien upon all improvements, tools, movable machinery and all other personal chattels used in operating said property," and by reason of the fact that the lease further provided that "the lessee shall not remove thereform any buildings or permanent improvements erected thereon."

In so holding the Court overlooked former controlling decisions of this Court and of the Supreme Court of the United States, wherein the identical question has been determined contrary to the opinion of the Court herein. Central Coal and Lumber Co. vs. Board of Equalization, 70 Okla. 131, 173 Pac. 442; Choctaw, Oklahoma and Gulf R. R. Co. vs. Mackey, 256 U. S. 531, 41 S. Ct. 592, 65 L. ed. 1076; Baltimore Ship Building Company vs. Baltimore, 195 U. S. 375, 25 S. Ct. 50, 49 L. ed. 242.

That plaintiff in error attaches hereto its brief in support of this petition, which brief is hereby referred to and made a part hereof.

[fol. 215] Wherefore, plaintiff in error prays that a rehearing be granted herein by this Honorable Court.

Guy L. Horton, County Attorney, Payne County, Oklahoma. George H. Jennings and L. O. Lytle, Attorneys for Plaintiff in Error.

[File endorsement omitted.]

[fol. 216] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

REHEARING DENIED—April 30th, 1935

25,794

GEORGE TABER

v.

I. T. I. O. COMPANY

Petition for rehearing denied.

[fol. 217] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

APPLICATION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING—Filed May 6, 1935

Comes now the plaintiff in error and respectfully shows that heretofore, to-wit: on the 12th day of March, 1935, a

judgment and decision of this court was rendered affirming the judgment of the District Court of Payne County, in favor of defendant in error and against plaintiff in error; that thereafter and within the time provided by law, the rules of this court, plaintiff in error filed in said cause his petition for re-hearing, which said petition was by the court overruled on the 30th day of April, 1935.

Wherefore, plaintiff in error prays for leave to file his second petition for re-hearing, a copy of which petition is herewith filed and made a part of this application.

Guy Horton, County Attorney, Payne County, Oklahoma. George H. Jennings, L. O. Lytle, Attorneys for Plaintiff in Error.

[fol. 218] I hereby certify that a full, true, and correct copy of the foregoing application for leave to file second petition for rehearing, addressed to Donald Prentiss, attorney of record for defendant in error, at Bartlesville, Oklahoma, was deposited by me in the United States Postoffice at the State Capitol, Oklahoma City, Oklahoma, with postage thereon fully prepaid, this 3rd day of May, 1935.

George H. Jennings, Attorney for Payne County, Oklahoma.

Leave granted to file application.

Edwin R. McNeill, Chief Justice.

[File endorsement omitted.]

[fol. 219] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

SECOND PETITION FOR REHEARING—Filed May 6, 1935.

Comes now George W. Taber, County Treasurer, Payne County, Oklahoma, plaintiff in error in the above entitled cause, and very respectfully petitions the court, by way of second petition for rehearing, that this Honorable court grant a rehearing in the above entitled cause for the following reasons and upon the following grounds, to-wit:

1

That this Honorable Court, in its opinion in said cause, wholly failed to distinguish between the application of a tax upon the franchise, or lease authorizing the conduct of the governmental instrumentality, and the profits and income flowing therefrom, and the simple application of a tax upon the personal property of the governmental agent engaged in the purpose authorized by such instrumentality.

2

That the court in its opinion cited as controlling in the case at bar the case of Jaybird Mining Company v. Weir, [fol. 220] 271 U. S. 609. That said case is not in point with the case at bar for the reason that in such case the court held that the ore or mineral taken from a restricted Indian lease by a government agent was not subject to taxation. The ore was nothing less than the income from said lease which has been repeatedly held not subject to taxation, Gil lespie v. Oklahoma, 257 U. S. 500, Carter v. Phillips, 88 Okla. 202. That in the present case, although the tax is attempted to be levied upon the personal property of the governmental agent, this court, in its opinion, placed it in the category of cases dealing with the attempted taxation of the governmental franchise or lease and income therefrom, Gillespie v. Oklahoma, supra, Carter v. Phillips, supra, I. T. I. O. Company v. Oklahoma, 240 U. S. 522, and ignored cases which are really in fact, exactly in point, which hold that the private, personal property of the governmental agency, as distinguished from the license, lease, franchise, or income therefrom, is taxable. McCulloch v. Maryland, 4 Wheat 316, Thomas v. Gay, 169 U. S. 264, Gromer v. Standard Dredging Company, 224 U. S. 362, Alward v. Johnson, 282 U. S. 509, Susquehanna Power Company v. State Tax Commission, 238 U. S. 291, Union Pacific Railroad Co. v. Peniston, 18 Wallace 5.

The Court's attention is especially directed to the fact that on the 14th day of February, 1935, the Circuit Court of Appeals of the Eighth Circuit decided in case of Wanless Iron Company v. Commissioner of Internal Revenue, 75 Fed. (2nd) 779, which case only officially appeared in print [fol. 221] on April 29, 1935, held in the 4th syllabus, as follows:

"United States may impose tax upon property of agency of state government, although property is used in or has relation to business of agency, where there is only remote influence upon exercise of functions of government, but may not impose tax which imposes direct burden upon exercise of governmental powers."

and in the body of the opinion said:

"While the line of demarcation is often difficult to follow or define, there is a recognized distinction between a nondiscriminatory tax upon the property of an agency of government, although the property is used in or has relation to the business of the agency, where there is only a remote, if any, influence upon the exercise of the functions of government, and a tax which is deemed to impose a direct burden upon the exercise of governmental powers. Willcuts v. Bunn. 282 U. S. 216, 51 S. Ct. 125, 127, 75 L. Ed. 304, 71 A. L. R. 1260; Indian Territory, etc., Oil Co. v. Board of Equalization, 288 U. S. 325, 53 S. Ct. 388, 77 L. Ed. 812; Burnett v. A. T. Jergins Trust, 288 U. S. 508, 53 S. Ct. 439, 440, 77 L. Ed. 925; Denman v. Commissioner (C. C. A. 8) 73 F. (2d) 193."

In addition to the authorities cited, supra, and those cited in the briefs heretofore filed by plaintiff in error, the right of the State of Oklahoma to levy an advalorem tax upon the equipment of a lessee of an oil and gas mining lease covering restricted Indian lands was further recognized by the Congress of the United States in the enactment of the Act of Congress of February 14, 1931 (Act 651 of the 71st Congress) amending Section 3 of the Act of Congress approved May 10, 1928, (Sec. 3, Chap. 517, Vol. 45 U. S. Stat. at L., Section 3594); which amendatory act is as follows:

[fol. 222] "Section 3. That all minerals, including oil and gas, produced on and after April 25, 1931, from restricted allotted lands of members of the Five Civilized Tribes in Oklahoma; or from inherited restricted land of full-blood Indian heirs or devisees of such lands, shall be subject to all state and federal taxes of every kind and character, the same as those produced from lands owned by other citizens of the State of Oklahoma; and the Secretary of the Interior is hereby authorized and directed to cause to be paid, from the individual Indian funds held under his supervision and

control and belonging to the Indian owners of the lands, the tax or taxes so assessed against the royalty interest of the respective Indian owners in such oil, gas and other mineral production; *provided, that nothing in this act shall be construed to impose or provide for double taxation, and in those cases where the machinery or equipment used in producing oil or other minerals on restricted Indian lands are subject to the advalorem tax of the State of Oklahoma for the fiscal year ending June* 30, 1931, *the gross production tax which is in lieu thereof shall not be imposed prior to July* 1, 1931."

The taxability on an advalorem basis of the property involved in this controversy was expressly recognized by this Honorable Court in its recent decision, In re: Texas Company Assessment, 31 Pac. (2nd) 929.

The right of the State of Oklahoma to levy an advalorem tax upon equipment belonging to a lessee and located upon restricted Indian lands was directly in issue in this case, and this Court recognized in its opinion that such property was subject to advalorem taxation by the State of Oklahoma.

This Court said in its Syllabus 1:

"Under the provisions of Section 3, c. 179, Acts of the Third Session of the Seventy-First Congress (approved February 14, 1931, 46 Stat. 1108), oil produced from restricted allotted lands of members of the Five Civilized Tribes is subject to a gross production tax from and after April 26, 1931, and where an ad valorem tax has been paid on the machinery and appliances used for the production of said oil for the tax year of 1930-31, said gross production tax could not be imposed prior to July 1, 1931, and since [fol. 223] the record herein shows that gross production tax was paid on the oil in question from and after July 1, 1931, held, that the machinery and appliances used for the production of said oil were not subject to ad valorem taxation for the tax year of 1931-32, and the county treasurer, at the instance of the tax ferret, was without authority to extend said property on the tax rolls for said year."

Wherefore, for all of the foregoing reasons plaintiff in error respectfully prays that this Honorable Court should grant your plaintiff in error oral argument as to the law

involved herein, and that upon such oral argument should grant your plaintiff in error a re-hearing and reconsideration of this case, in the light of all of the above authorities dealing with the questions involved herein, and, as it is the intention of the plaintiff in error to appeal this case to the Supreme Court of the United States should this, his second petition for re-hearing, be overruled, we request that this Honorable Court stay its mandate in this cause for a sufficient length of time to enable the plaintiff in error to properly lodge its appeal in the Supreme Court of the United States.

Respectfully submitted, Guy Horton, County Attorney of Payne County, Oklahoma. George H. Jennings, L. O. Lytle, Attorneys for Plaintiff in Error.

I hereby certify that a full, true and correct copy of the foregoing instrument, addressed to Donald Prentiss, attorney for the plaintiff in error, at Bartlesville, Oklahoma, was deposited by me in the United States Post-Office in the State Capitol Building in Oklahoma City, with postage thereon fully paid this 3rd day of May, 1935.

George H. Jennings.

Leave granted to file.

Edwin R. McNeill, Chief Justice.

[File endorsement omitted.]

[fol. 224] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

PETITION FOR ORAL ARGUMENT—Filed May 13, 1935

Comes now the plaintiff in error and respectfully shows to Court:

That plaintiff in error has filed herein, with leave of Court, his second petition for re-hearing, and plaintiff in error respectfully requests that oral argument be granted thereon, and in support of his petition for oral argument, appellant says:

That the opinion and judgment rendered herein has expressly held that the property of a Federal agency or instrumentality employed in the performance of such agency is exempt from taxation by the municipal sub-division of government in the State of Oklahoma.

That said opinion has overlooked the former controlling decisions of this Court, and of the Supreme Court upon the same subject, and is in conflict therewith.

Your petitioner further says that after the opinion herein becomes final it will release and exempt from taxation by the municipal sub-divisions of government in this State the [fol. 225] property of all Federal instrumentalities and agencies; that included within such scope is the property of railroads, telegraph companies, telephone companies and carriers of the United States Mail, and other instrumentalities and agencies of like nature.

Your petitioner further says that the question herein presented is of great public importance by reason of the further fact that the sphere of Federal instrumentalities and agencies are being enlarged from time to time, and that many millions of dollars in taxable wealth will be released and exempted from taxation in the State of Oklahoma if the opinion herein becomes final, and for the reasons above assigned this request and petition for oral argument should be by the Court allowed.

Respectfully submitted, Guy Horton, County Attorney, Payne County, Okla. George H. Jennings, L. O. Lytle, Attorneys for Plaintiff in Error.

STATE OF OKLAHOMA,
County of Creek, ss:

I hereby certify that on this 10th day of May, 1935, I, George H. Jennings, deposited in the United States post-office, with postage prepaid, a true and correct copy of the foregoing petition for oral argument, addressed to Donald Prentiss, Legal Department, c/o I. T. I. O. Company, Bartlesville, Oklahoma. Same being mailed from Sapulpa, Oklahoma.

George H. Jennings.

Subscribed and sworn to before me this 10th day of May, 1935. J. V. Frazier, Notary Public. My commission expires Nov. 9, 1937. (Seal.)

[File endorsement omitted.]

[fol. 226] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ORDER SETTING CAUSE—May 14th, 1935

25,794

GEORGE W. TABER, Treasurer,

v.

I. T. I. O. COMPANY

Defendant in error directed to respond to second petition for rehearing within 15 days from this date. Cause set for oral argument on rehearing on June 11, 1935.

[fol. 227] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

RESPONSE OF DEFENDANT IN ERROR TO SECOND PETITION FOR REHEARING OF PLAINTIFF IN ERROR—Filed May 29, 1935

Comes now the defendant in error and for its response to the second petition for rehearing of plaintiff in error states:

1. That it denies each and every material allegation contained in the second petition for rehearing and specifically denies that this Court in its opinion rendered in this case on March 12, 1935, cited as controlling decisions which are not in point with the case at bar, or ignored other decisions which are controlling in this case.

Defendant in error further states that the opinion heretofore rendered in this cause by this Court correctly holds that the property involved is not subject to ad valorem taxation by the State of Oklahoma, or its municipal subdivisions, for the reason the same is being used by defendant in error in its operations as a federal instrumentality and that the authorities relied upon by plaintiff in error in his second petition for rehearing are not in point and have no application to the facts in the case at bar.

[fol. 241] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

PETITION FOR ORDER STAYING ISSUANCE OF MANDATE—Filed May 19, 1936

Comes now the plaintiff in error, and respectfully shows to this Honorable Court that on the 12th day of May, 1936, this Court, by its order and judgment, overruled, and denied the second petition for re-hearing filed in this cause by the plaintiff in error, and affirmed the judgment rendered herein on the 12th day of March, 1935; that it is the intention of the plaintiff in error to appeal this cause to the Supreme Court of the United States and to apply to the Court last mentioned for a writ of certiorari, and that the plaintiff in error desires to have this Court stay its mandate in this cause for a sufficient length of time to enable the plaintiff in error to properly lodge his appeal in the Supreme Court of the United States.

Wherefore, plaintiff in error prays that this Honorable Court make and enter its order herein staying the issuance of its mandate in this cause for a sufficient length of time to enable the plaintiff in error to properly lodge its appeal from the judgment herein in the Supreme Court of the United States.

Leon J. York, County Attorney. George H. Jennings, L. O. Lytle, Attorneys for Plaintiff in Error.

[File endorsement omitted.]

[fol. 242] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER STAYING MANDATE—Filed May 19, 1936

It appearing that an opinion was rendered in the above styled and numbered cause on the 12th day of March, 1935, and thereafter petition for rehearing and second petition for rehearing were overruled by the Court, and it further

appearing that plaintiff in error has filed herein his application for an order staying the issuance of the mandate to enable said plaintiff in error to appeal to the Supreme Court of the United States,

It is therefore ordered that the mandate in this cause be stayed for a period of ninety days from this date to enable the plaintiff in error to perfect an appeal to the Supreme Court of the United States.

Dated May 19th, 1936.

Edwin R. McNeill, Chief Justice.

[File endorsement omitted.]

[fol. 243] Clerk's certificate to foregoing record omitted in printing.

[fol. 244] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1936

The petition herein for a writ of certiorari to the Supreme Court of the State of Oklahoma is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Wherefore, defendant in error prays that the second petition for rehearing of plaintiff in error be denied and overruled.

W. P. McGinnis, Fred M. Carter, Archibald Bonds, Donald Prentice, Attorneys for Defendant in Error.

[File endorsement omitted.]

[fol. 228] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

DISSENTING OPINION ON ORDER DENYING REHEARING—Filed May 12, 1936

WELCH, J.:

I agree with the rule stated in paragraph 4 of the syllabus that, "without congressional consent no federal agency or instrumentality can be taxed by state authority." That the instrumentality itself cannot be taxed is so held by the authorities cited in the majority opinion, and by the more recent case of State of Oklahoma v. Barnsdall Refineries, Inc. et al. decided by the Supreme Court of the United States at the October term 1935, affirming the decision of this court in Barnsdall v. Oklahoma Tax Commission, 171 Okla. 145, 41 Pac. (2d) 918.

But I cannot agree with the rule stated in paragraph 3 of the syllabus that "personal property actually used by the lessee in the production of oil and gas or either from restricted Indian land is a part of a federal agency or instrumentality."

By joining the rules stated in these two paragraphs of the syllabus the majority opinion is made to hold that tan-[fol. 229] gible personal property, otherwise subject to bearing its just portion of the burden of taxation, is rendered non-taxable or exempt from taxation merely because the owner used it in carrying out a contract with the federal government, or a contract or lease in which the government has an interest.

Such holding has never been approved by the Supreme Court of the United States, nor heretofore by this court. Upon the contrary, both courts have declared otherwise and I think we should not now depart therefrom.

In the early case of In re Indian Territory Illuminating Oil Co. 43 Okla. 307, 142 Pac. 997, this court stated the rule to be that the state had the right to tax property in the state, although the owner of the property might use the same in the development of leases on restricted Indian land, and speaking of the company there involved, which is the same company involved in the case at bar, the court said:

"Primarily this company is not a federal agency. It is a corporation for profit, incorporated under the laws of the state of New Jersey, and doing business in the state of Oklahoma, with whom the federal government finds it convenient or profitable to deal in carrying out its policy toward the Osage Tribe of Indians. What the state is attempting to do is to tax the property of this corporation within its borders. This certainly is a proper exercise of the taxing power of the state. In re Assess. W. U. Tel. Co. 35 Okla. 626, 130 Pac. 565. Borrowing the language of Mr. Justice Holmes, in Baltimore Shipbuilding Co. v. Baltimore, 195 U. S. 375, 25 Sup. Ct. 50, 49 L. ed. 242:

'It seems to us extravagant to say that an independent private corporation for gain, created by a state, is exempt for state taxation, either in its corporate person, or its property, because it is employed by the United States even if the work for which it is employed is important and takes much of its time."

[fol. 230] "As the authorities sustaining this view of the case are collected in McAlester-Edwards Coal Co. v. Trapp, 141 Pac. 794, recently handed down, but not yet officially reported, it will be sufficient to refer to that case as controlling on this phase of the case at bar."

In the McAlester-Edwards case referred to it was held that the gross revenue tax imposed on lessees share of coal was not a tax upon the governmental instrumentality.

In the case of In re Skelton Lead & Zonc Co. 81 Okla. 134, 197 Pac. 495, this court considered the taxable status of property owned by the lessee and used in operating under lease upon restricted Indian lands, and it was held in the 15th paragraph of the syllabus that:

"The mills, plants, machinery, equipment, and all other property, being exclusively the private property of the lessee, and having a situs within this state, and not being exempt by law, are subject to state taxation. * * *"

The opinion in that case by Chief Justice Harrison analyzes most of the authorities which I have referred to, and the conclusion there seems to me to be contrary to the majority conclusion here. I think the reasoning in that case is unanswerable, demonstrating as it does the "wide distinction between the taxation of the agency itself and the taxation of private property of the agent." And that opinion states this conclusion in these words:

"A state has power to impose a property tax upon the private property of a federal agent."

In the case of Protest of Bendelari, 82 Okla. 97, 198 Pac. 606, this court in an opinion by Mr. Justice N. E. McNeill, [fol. 231] quoted at length from Union Pac. Railway Co. v. Peniston, 85 U. S. 552, 21 L. ed. 787; Thomas v. Gay, 169 U. S. 264, 42 L. ed. 740; Central Pac. Railway Co. v. California, 162 U. S. 91, 40 L. ed. 903, and Choctaw O. & G. Ry. Co. v. Harrison, 235 U. S. 292, 59 L. ed. 234, observing that the last mentioned opinion recognized the right to tax the tangible property of the lessee upon an ad valorem basis, and held in paragraph two, three and four of the syllabus as follows:

"Section 7302, Revised Laws 1910, provides 'all property in this state, whether real or personal, including the property of corporations, banks, and bankers, except such as is exempt, shall be subject to taxation.'

"No constitutional implications prohibit a state tax upon the property of an agent of the government, merely because it is the property of such agent.

"Although a corporation may be an agent of the United States, the state may levy a property tax upon its property, and, when Congress has not interposed to protect said property from state taxation, said taxation is not obnoxious to that objection."

The majority opinion in the case at bar states:

"We are bound by the holding of the Supreme Court of the United States in Gillispie v. State, 257 U. S. 501, 66

L. ed. 338; Jaybird Mining Co. v. Weir, 271 U. S. 609, 70 L. ed. 1112."

And later in the opinion it is said:

"As we understand the two latter cases, they, and particularly the Jaybird Mining Company case, in effect overrule In re Skelton Lead & Zinc Co., supra."

I do not think these decisions are controlling or applicable, nor that they in effect overrule the Skelton case, 81 Okla. 134, 197 Pac. 495.

[fol. 232] In the Gillispie case there was not involved any ad valorem tax question. There was involved the income tax law.

In the Jaybird Mining Company case there was involved an ad valorem tax, but not upon the private property of the lessee used upon the lease. It was there sought to tax the ore in possession of the lessee which was taken from restricted Indian lands and held by the lessee on the premises on the tax assessment date prior to division between the lessee and the lessor.

Those decisions are authority for the rules therein stated, but neither case deals with or in any manner considers separate private property of the lessee used in connection with or upon the lease, and neither case contains any reasoning or states any rule relative to the taxable status of any such private property. I therefore cannot agree that those decisions are controlling here or that they in effect overrule the Skelton case, supra. Other decisions of the Supreme Court of the United States point directly to a conclusion contrary to the majority opinion as I shall undertake to demonstrate.

The gist of the contention here made is that the property involved is exempt from taxation because, to quote from the brief,

"Taxation thereof would constitute a tax upon, and interference with a governmental agency in the performance of its governmental functions."

But an ad valorem tax on the private property of a contractor or lessee is not a tax on the governmental agency itself, and such private property is taxable though used

by the contractor to carry out his contract or used by the lessee on the premises.

[fol. 233] It was so held in Thomas v. Gay, 169 U. S. 264, 42 L. ed. 740; Watoner v. Evans, 170 U. S. 588, 42 L. ed. 1154; Baltimore Shipbuilding Co. v. Baltimore, 195 U. S. 375, 49 L. ed. 242; Montana Catholic Mission v. Missoula County, 200 U. S. 119, 50 L. ed. 398; Alward v. Johnson, 282 U. S. 509, 75 L. ed. 496, and Gromer v. Standard Dredging Co., 224 U. S. 362, 56 L. ed. 801; and the lessees part of the oil itself, after segregation, was held subject to state taxation in I. T. I. O. v. Board of Equalization of Tulsa County, and Board of County Commissioners of Payne County, 288 U. S. 325, 77 L. ed. 812.

The majority opinion in the case at bar further states:

"It is generally held that federal instrumentalities are not subject to a state tax. This rule has been recognized since the decision in McCulloch v. Maryland, 4 Wheat (U. S.) 316, 4 L. ed. 579."

I agree with that rule, but it seems to me the majority opinion wholly fails to note the distinction between a tax directly upon a federal instrumentality, and an ad valorem tax merely upon the property of the federal agent. The former may not be imposed, while the latter may be, and the distinction between the two is clearly drawn and repeatedly referred to in the decisions of the Supreme Court of the United States.

In McCulloch v. Maryland cited in the majority opinion such distinction is noted by the Chief Justice. And in Union Pacific Ry. Co. v. Peniston, supra, the court said:

"This distinction so clearly drawn in the earlier decisions, between a tax on the property of a governmental agent, and a tax upon the action of such agent, or upon his right to be, has ever since been recognized. All state taxation which does not impair the agent's efficiency in the discharge of his duties to the government has been sustained when challenged, and a tax upon his property generally [fol. 234] has not been regarded as beyond the power of a state to impose."

And in Thomson v. Union Pacific Railroad Co., 76 U. S. 579, 19 L. ed. 792, where upon this point it was said:

"But we think there is a clear distinction between the means employed by the government and the property of

agents employed by the government. Taxation of the agency is taxation of the means; taxation of the property of the agent is not always, or generally, taxation of the means. No one questions that the power to tax all property, business and persons, within their respective limits, is original in the states and has never been surrendered."

And in Susquehanna Power Co. v. State Tax Commission of Maryland, 283 U. S. 291, 75 L. ed. 1042, it is said:

"The distinction has long been taken between a privilege or franchise granted by the government to a private corporation in order to effect some governmental purpose, and the property employed by the grantee in the exercise of the privilege, but for private business advantage. The distinction was pointed out by Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat, 316, 435, 4 L. ed. 579, 608, and in Osborn v. Bank of United States, 9 Wheat, 738, 867, 6 L. ed. 204, 234; see Union P. R. Co. v. Peniston, 18 Wall. 5, 34-37, 21 L. ed. 787, 792-794. It has been followed without departure, and property so owned and used has uniformly been held to be subject to state taxation."

And in I. T. I. O. v. Board of Equalization, 288 U. S. 235, 77 L. ed. 812, it is said:

"There is a recognized distinction between a non-discriminatory tax upon the property of an agent of the government, albeit the property used in, or as relation to, the business of the agency, * * * and a tax which is deemed to impose a direct burden upon exertion of governmental powers."

Other federal decisions noting this distinction are: Osborn v. Bank, 9 Wheat (U. S.) 738, 6 L. ed. 204 (234); First National Bank v. Commonwealth of Kentucky, 76 U. S. 353, 19 L. ed. 701; Union Railroad v. Peniston, 85 U. S. 552, 21 L. ed. 787; New York Lake Erie & W. Rail-[fol. 235] road Co. v. Pennsylvania, 158 U. S. 431, 39 L. ed. 1043; Central Railroad Co. v. State of California, 162 U. S. 91, 40 L. ed. 903; Gromer v. Standard Dredging Co., 224 U. S. 363, 56 L. ed. 801; Choctaw O. & G. R. Co. v. Harrison, 235 U. S. 292, 59 L. ed. 234; Ackerline v. United States, 240 U. S. 531, 60 L. ed. 783; Choctaw O. & G. R. Co.

v. Mackey, 256 U. S. 531, 65 L. ed. 1076; Fort Leavenworth Railroad Co. v. Lowe, 114 U. S. 525, 29 L. ed. 264; Western Union v. Attorney General, 125 U. S. 426, 31 L. ed. 790.

Thus it appears that the United States Supreme Court has noticed this distinction and made forceful reference to it every time the subject-matter has been important, and I insist that this court should likewise observe the distinction.

We should not lose sight of the reason for, and the foundation of the rule that federal agents or instrumentalities are exempt from state taxation. In Union Pacific Railroad Co. v. Peniston, 85 U. S. 552, 21 L. ed. 787, it was said:

"It is, therefore, manifest that exemption of Federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform."

And in the First National Bank of Louisville v. Commonwealth of Kentucky, 76 U. S. 353, 19 L. ed. 701 (703), after discussing the rule or principle of exempting federal instrumentalities or agents from state legislation and taxation, it was said:

[fol. 236] "The principle we are discussing has its limitation, a limitation growing out of the necessity on which the principle itself is founded. That limitation is, that the agencies of the Federal Government are only exempted from state legislation, so far as that legislation may interfere with, or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the Government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustifiable invasion of the rights of the States."

And in Thomas v. Gay, 169 U. S. 264, 42 L. ed. 740, (744) this expression was used:

"It is not perceived that local taxation, by a State or Territory, of property of others than Indians would be in interference with Congressional Power."

And in Indian Territory Illuminating Oil Co. v. Board of Equalization, 288 U. S. 325, 77 L. ed. 812, (815) dealing with a claim of exemption by the company as oil lessee of Indian lands, this language was used:

"Such immunity as petitioner enjoyed as a governmental instrumentality inhered in its operations as such, and being for the protection of the Government in its function extended no further than was necessary for that purpose."

And in Willcuts v. Bunn, 282 U. S. 216, 75 L. ed. 304, (307) it was said:

"No constitutional implications prohibit a non discriminatory tax upon property of the agent of the government merely because it is the property of such an agent and used in the conduct of the agent's operations and necessary for the agency."

And in Thomson v. Union Pacific Railroad Co., 76 U. S. 579, 19 L. ed. 792, (798) prominence was given to the question whether there had been federal intervention in reference to the questioned tax, and this language was used:

"But it will be safe to conclude, in general, in reference to persons and state corporation employed in government [fol. 237] service, that when Congress has not interposed to protect their property from state taxation, such taxation is not obnoxious to that object."

This quoted principle was expressly reaffirmed in Central Railroad Co. v. State of California, 162 U. S. 91, 40 L. ed. 903.

And in Western Union Telegraph Co. v. Attorney General of the Commonwealth of Massachusetts, 125 U. S. 530, 31 L. ed. 790, it was held as stated in head note three:

"Agencies of the Federal Government are only exempt from state taxation so far as such taxation may interfere

with or impair their efficiency in performing the functions by which they serve the government."

And in Wagoner v. Evans, 170 U. S. 588, 42 L. ed. 1154, where it was contended, as it is contended in the case at bar, that the property tax, if permitted, would interfere with the federal leasing of the Indian lands, the court said that the contention "seems to us too indirect and far-fetched an incident to affect our conclusion."

And in Baltimore Shipbuilding D. & D. Co. v. Baltimore, 195 U. S. 375, 49 L. ed. 242, it was said by Justice Holmes that it seems to the court:

"• • • Extravagant to say that an independent private corporation for gain, created by a state, is exempt from state taxation, either in its corporation person or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time. Thompson v. Union P. R. Co., 9 Wall, 579, 19 L. ed. 792; Union P. R. Co. v. Peniston, 18 Wall, 5, 21 L. ed. 787."

Similar expressions occur in all of the other federal cases cited, and from all of the authorities it seems clear to me that while there is a well-defined exemption of federal instrumentalities or agencies from state taxation, it is [fol. 238] based upon the necessity of preserving the federal instrumentality and its efficiency in aid of the government, and does not extend any further than that which is necessary to preserve the agency or instrumentality and keep its efficiency unimpaired, and that state taxation which does not impair such efficiency is always upheld and that a mere ad valorem tax upon tangible property is quite generally upheld both by this court and the Supreme Court of the United States.

I, therefore, must conclude that a reasonable ad valorem tax on such property is fully sustained by the decided cases. There is nothing whatever in the record to indicate that the payment of this small ad valorem tax would in any manner impair the efficiency of the Indian Territory Illuminating Oil Company in acting as lessee of Indian oil lands, or in any manner interfere with the policy and practice of the Government in leasing lands for oil development.

The majority opinion infers that the property here involved might be sold as under a tax lien, but that I take it is mere error of expression, for no lien exists against personal property for the tax thereon, as does exist against real estate by statute.

The majority opinion refers to that portion of the lease preventing removal of improvements, and in effect making them the property of the lessor. It seems that this court is committed to the rule that such provision would not exempt any of the property here involved from taxation while held and controlled by the lessee during the life of the lease.

[fol. 239] In Central Coal & Lumber v. Board of Equalizatio- of Leflore County, 70 Okla. 131, 173 Pac. 442, it was held in paragraph two of the syllabus:

"Improvements placed upon Indian land not subject to taxation, under the terms of a lease expiring at a specific time, which provides that such improvements should not be removed, but remain upon and become the property of the lessor as a part of the consideration for the lease, but gives the lessee control and ownership during the life of the lease, and personal property and subject to taxation until the lease expires."

I, therefore, cannot concur in the majority opinion, and respectfully dissent.

I am, authorized to say that Mr. Justice Bayless and Mr. Justice Corn concur in this dissent.

[File endorsement omitted.]

[fol. 240] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ORDER DENYING REHEARING—May 12, 1936

25,794

GEORGE W. TABER, County Treasurer,

v.

I. T. I. O. COMPANY.

Petition for rehearing denied. Osborn, V. C. J., Bayless, Welch and Corn, JJ., dissent.